

NATIONAL SECURITY LEGISLATION
PRELIMINARY OBSERVATIONS

1. The National People's Congress ("NPC") of the People's Republic of China ("PRC") on 28 May 2020 made the decision on *"Establishing and Improving a Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security"* (the "Decision").
2. Under the Decision, among other things, the NPC Standing Committee ("NPCSC") is to formulate a law on national security (the "Legislation"). When formulated, the Legislation is to be introduced into Annex III of the Basic Law and take effect in the HKSAR by promulgation.
3. According to the NPC, it made the Decision in accordance with Articles 31 and 62(2), (14) and (16) of the Constitution of the PRC (the "Constitution"), as well as the relevant provisions of the Basic Law of the HKSAR.
4. The Law Society acknowledges that, as the highest state organ and legislative body of the PRC, the NPC under the Constitution has the power to decide on and to institute a law for maintaining national security. The Law Society considers that the NPC should exercise restraint in invoking its power under the Constitution to introduce laws to be applied to the HKSAR, in order to maintain confidence in the *"One Country Two Systems"* policy and the Rule of Law in Hong Kong.
5. Although the NPCSC is to prepare the Legislation, the Law Society respectfully requests transparency in the legislative process and that NPCSC duly takes into account the views of the Hong Kong people.
6. We also invite the NPCSC's attention to the following suggestions, when they are drafting the Legislation.
7. It is vital that the Legislation should be formulated in compliance with common law principles and comply with the provisions of the International Covenant

on Civil and Political Rights (ICCPR) as applied to Hong Kong, in order that the human rights protection for Hong Kong people are fully safeguarded.

8. So far as the offences prescribed under the Legislation and the court hearings for these offences are concerned, the Law Society respectfully requests that
 - (a) these offences must be narrowly and well defined
 - (b) they must not be retrospective
 - (c) the current regime on admissibility of criminal evidence should be applicable to these offences
 - (d) the sentences which the offences attract should be reasonable, necessary and proportionate
 - (e) in principle, there should be open court jury trials for the offences
 - (f) there should not be a separate court for the offences
 - (g) judges hearing these cases should be assigned based on their judicial and professional qualities, in line with the criteria appearing in Basic Law Article 92. There should not be any nationality criteria in the assignment of judges.

9. Any agencies set up by national security organs pursuant to the Decision must comply with the laws of the HKSAR and be subject to the jurisdiction of the HKSAR Courts.

10. We add that nothing in the Legislation should interfere with communications protected by legal professional privilege. Legal professional privilege is safeguarded pursuant to the Basic Law and is a fundamental common law right of all legal persons, which is not subject to any competing policy.

11. The Law Society reserves its rights to provide further comments on the Decision and the draft Legislation.

The Law Society of Hong Kong
11 June 2020