

(Unofficial translation of a summary of the Explanation on the Draft NSL of 18/6/2020 (as reported by Xinhuanet on 20/06/2020 and published on the NPC's website) for information only)

Explanation on the “Draft Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region” addressed to the 19th Session of the 13th Standing Committee of the National People’s Congress by the Responsible Official of the Legislative Affairs Commission under the Standing Committee of the National People’s Congress

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BEIJING, 20 June (Xinhua) The responsible official of the Legislative Affairs Commission under the Standing Committee of the National People’s Congress (“NPC”), as entrusted by the Meeting of the Council of Chairpersons, explained on 18 June the Draft Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (“the Draft National Security Law”) to the 19th Session of the 13th NPC Standing Committee. The explanation is summarized below.

It is an important task to enact the law on safeguarding national security in the Hong Kong Special Administrative Region (“HKSAR”) for implementing the spirit of the Fourth Plenary Session of the 19th Central Committee of the Communist Party of China (“CPC Central Committee”) and 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

On 28 May 2020, the Third Session of the 13th NPC passed 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 (hereinafter “the Decision” in brief), with effect as of the date of promulgation. It is an arrangement made by the highest organ of state power to implement the spirit of the Fourth Plenary Session of the 19th CPC Central Committee and act in accordance with relevant provisions of the Constitution and the Hong Kong Basic Law in response to the new situations and needs while upholding and enhancing the “One Country, Two Systems” regime. This important institutional arrangement is made at the national level to establish and improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security and provides a constitutional basis for formulating the relevant law in the next step. The enactment of the relevant law based on the Decision is a material aspect and key component for completing this important institutional arrangement. Article 6 of the Decision stipulates that “[t]he NPC Standing Committee is entrusted to formulate the relevant law on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security, in order to effectively prevent, suppress and punish acts and activities of secession, subversion, organization and perpetration of terrorist activities, etc. that seriously endanger national security, as well as activities of foreign or external forces interfering in the affairs of the HKSAR. The NPC Standing Committee decides on including the relevant law into Annex III to the Basic Law of the HKSAR of the People’s Republic of China (“PRC”) to be promulgated and implemented by the HKSAR locally.” During the Two Sessions of the NPC and the Chinese People’s Political Consultative Conference (“CPPCC”) (“National Two Sessions”) this year, many NPC deputies, national CPPCC members and relevant parties proposed that the NPC Standing Committee should formulate the relevant law on safeguarding national security in the HKSAR in accordance with

the Decision as soon as possible in order to advance the development of the HKSAR's system and mechanisms on safeguarding national security and ensure the effective implementation of the relevant law in the HKSAR.

The explanation on the draft Decision at the Third Session of the 13th NPC made clear the five basic principles which must be observed and well grasped in establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security, namely: resolutely safeguarding national security; upholding and enhancing the "One Country, Two Systems" regime; adherence to administering Hong Kong in accordance with the law; resolutely opposing external interference; and effectively safeguarding the legitimate rights and interests of Hong Kong residents. The NPC's Decision fundamentally provided for the core elements of the institutional arrangement in respect of safeguarding national security in the HKSAR. The relevant law on safeguarding national security in the HKSAR to be enacted in due course will fully launch, implement and embody the spirit of the Third Session of the 13th NPC and the contents of the Decision. It is also the legalization, standardization and clarification of the HKSAR's institutional arrangement to safeguard national security.

In the recent period, the relevant departments of the Central Authorities earnestly embarked on drafting the relevant law and on multiple occasions listened to the opinions and suggestions of the Chief Executive Mrs. Carrie Lam and the relevant principal officials of the HKSAR on Hong Kong's national security legislation. The Hong Kong and Macao Affairs Office of the State Council and the Liaison Office of the Central People's Government ("CPG") in the HKSAR, through various means and channels, listened to the opinions and suggestions of

the Hong Kong deputies to the NPC, Hong Kong national CPPCC members, Hong Kong provincial CPPCC members, representatives from all sectors of the Hong Kong community and members of the Hong Kong legal profession etc., on the State's formulation of the relevant law. A careful study was also conducted on the relevant opinions and suggestions provided by the NPC deputies and the national CPPCC members during the National Two Sessions. It was on this basis that the Draft National Security Law was drawn up. After the Draft Law was formulated, the relevant authorities specifically solicited the opinions of the HKSAR Government and relevant parties on it. They carefully studied the opinions and suggestions reflected by the HKSAR Government and fully considered the actual situation of the HKSAR. In the spirit of optimized assimilation, they made multiple revisions and improvements to the Draft Law.

The NPC Standing Committee has identified it as an important and urgent task in the legislative work to expeditiously complete the legislation for safeguarding national security in the HKSAR, and has stepped up its efforts on the relevant work. On 17 June, upon hearing the report by the Legislative Affairs Commission of the NPC Standing Committee on matters including the drafting of the National Security Law, the Meeting of the Council of Chairpersons considered the Draft compliant with the constitutional requirements and constitutional principles, the "One Country, Two Systems" policy, the Hong Kong Basic Law and in line with the spirit of the NPC's Decision. Finding the Draft mature and feasible, it decided to submit the "Draft Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region" to the NPC Standing Committee for deliberation.

The guiding ideology and working principles followed in drafting the Draft National Security Law

The following should be observed in studying and drafting the National Security Law. The guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era must be adhered to. The spirit of the Fourth Plenary Session of the 19th CPC Central Committee and the Third Session of the 13th NPC must be thoroughly implemented. The NPC Standing Committee must fully, faithfully and effectively exercise its relevant legislative powers and functions as mandated by the NPC under the relevant provisions of the Constitution, the Hong Kong Basic Law and the NPC's Decision. The regime of "One Country, Two Systems" must be upheld and enhanced. Full consideration must be given to the practical needs for safeguarding national security and the actual circumstances of the HKSAR. Systematic and comprehensive provisions shall be made in respect of the legal system and enforcement mechanisms for the HKSAR to safeguard national security. National sovereignty, security and development interests must be resolutely protected. The constitutional order in the special administrative regions as established by the Constitution and their Basic Laws must be staunchly maintained. Strong constitutional basis and legal basis must be provided for advancing the HKSAR's development of the relevant system and mechanisms to safeguard national security, and for strengthening its law enforcement and judicial work on safeguarding national security.

In the process of studying and drafting the relevant law, we should strive to grasp, observe and embody the working principles below. The first is strengthening confidence in the institution, and striving to optimize and improve the HKSAR's relevant system and mechanisms as

implemented in accordance with the Constitution, the Hong Kong Basic Law and the NPC's Decision in light of the new situations. The second is adhering to a problem-oriented approach, and striving to resolve the existing legal loopholes, institutional deficiencies and "shortcomings" in the work of the HKSAR in respect of safeguarding national security. The third is highlighting the main bodies of responsibilities, and striving to implement the constitutional responsibilities and key responsibilities of the HKSAR for safeguarding national security. The fourth is coordinating the institutional arrangements, and striving to make systematic and comprehensive provisions at the national level and the level of the HKSAR in respect of the legal system and enforcement mechanisms. The fifth is accommodating the differences between Mainland China and the HKSAR, and striving to address the convergence, compatibility and complementarity between this Law, and the relevant national laws and local laws of the HKSAR.

Main contents of the Draft Law

The Draft National Security Law consists of 66 articles forming six chapters, namely "General Principles", "The Duties and the Government Bodies of the HKSAR for Safeguarding National Security", "Offences and Penalties", "Jurisdiction, Applicable Law and Procedure", "Office for Safeguarding National Security of the CPG in the HKSAR" and "Supplementary Provisions". This is a comprehensive piece of legislation comprising substantive law, procedural law and organic law. The Draft mainly covers the following aspects:

(I) It clearly stipulates that the CPG has an overarching responsibility for national security affairs, and that the HKSAR has a constitutional duty to safeguard national security. (1) The CPG has an

overarching responsibility for national security affairs relating to the HKSAR. It is the duty of the HKSAR under the Constitution to safeguard national security and the HKSAR shall perform the duty accordingly. The executive authorities, legislature and judiciary of the HKSAR shall effectively prevent, suppress and impose punishment for any act or activity endangering national security in accordance with the relevant laws. (2) It is the common responsibility of all the people of China, including the people of Hong Kong, to safeguard national sovereignty, unity and territorial integrity. Any institution, organization or individual in the HKSAR shall abide by this Law and other laws of the HKSAR in relation to the safeguarding of national security, and shall not engage in any activity which endangers national security. A resident of the HKSAR 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. (3) The HKSAR shall complete, as early as possible, legislation for safeguarding national security as stipulated in the Basic Law of the HKSAR and shall refine the relevant laws. (4) In order to safeguard national security effectively, the law enforcement and judicial authorities of the HKSAR shall fully enforce this Law and the laws in force in the HKSAR concerning the prevention of, suppression of, and imposition of punishment for acts endangering national security. (5) The HKSAR shall strengthen its work on safeguarding national security and prevention of terrorist activities. The Government of the HKSAR shall take necessary measures to strengthen supervision and regulation over matters concerning national security, including those relating to schools, universities and social organizations.

(II) It clearly stipulates the important rule-of-law principles to be observed for the HKSAR to safeguard national security. (1) 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 the HKSAR enjoy under the Basic Law of the HKSAR and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong, shall be protected in accordance with the law. (2) 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. A person is presumed innocent until convicted by a judicial body. The right to defend himself or herself and other rights in judicial proceedings that a criminal suspect, defendant, and other parties in judicial proceedings are entitled to under the law shall be protected. No one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in judicial proceedings.

(III) It clearly stipulates the relevant government bodies and their duties and functions for the HKSAR to establish and improve national security. (1) The HKSAR shall establish the Committee for Safeguarding National Security (“HKSAR Committee on National Security”). The Committee shall be responsible for affairs relating to and assume primary responsibility for safeguarding national security in the HKSAR. It shall be under the supervision of and accountable to the CPG. (2) The Chief Executive shall be the chairperson of the HKSAR Committee on National Security. The other members of the Committee

shall be the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice, the Secretary for Security, the Commissioner of Police, the head of the department for safeguarding national security of the Hong Kong Police Force, the Director of Immigration, the Commissioner of Customs and Excise, and the Director of the Chief Executive's Office. A secretariat headed by a Secretary-General shall be established under the Committee. The Secretary-General shall be appointed by the CPG upon nomination by the Chief Executive. (3) The duties and functions of the HKSAR Committee on National Security shall be: analyzing and assessing developments in relation to safeguarding national security in the HKSAR, making work plans, and formulating policies for safeguarding national security in the HKSAR; advancing the development of the legal system and enforcement mechanisms of the HKSAR for safeguarding national security; and coordinating major work and significant operations for safeguarding national security in the HKSAR. (4) The HKSAR Committee on National Security shall have a National Security Adviser, who shall be designated by the CPG and provide advice on matters relating to the duties and functions of the Committee. (5) The Police Force of the HKSAR shall establish a department for safeguarding national security with law enforcement capacity. (6) The Department of Justice of the HKSAR shall establish a specialized prosecution division responsible for the prosecution of offences endangering national security and other related legal work.

(IV) There are clear provisions on the four types of offences endangering national security and their penalties. Chapter III of the Draft "Offences and Penalties" is divided into six parts. It specifies the constituent elements, corresponding criminal liabilities, other provisions on penalty and scope of application for the four types of offences, namely secession, subversion, terrorist activities and collusion with a foreign

country or with external elements to endanger national security. It differentiates between various situations and stipulates the respective penalties for the four types of offences.

(V) The jurisdiction, applicable law and procedure are clearly stipulated. (1) The HKSAR shall have jurisdiction over cases concerning offences under this Law, except under the specified circumstances. (2) This Law and the laws of the HKSAR shall apply to procedural matters, including those related to criminal investigation, prosecution, trial, and execution of penalty, in respect of cases concerning offences endangering national security over which the HKSAR exercises jurisdiction. Cases concerning offences endangering national security within the jurisdiction of the HKSAR shall be tried on indictment. (3) When handling cases concerning offences endangering national security, the department for safeguarding national security of the Police Force of the HKSAR may take measures that law enforcement authorities, including the Hong Kong Police Force, are allowed to apply under the laws in force in the HKSAR in investigating serious crimes, and may exercise the relevant powers and functions and take the relevant measures stipulated in this Law. (4) The Chief Executive shall designate a number of judges from serving or eligible former magistrates, the judges of the District Court, the judges of the Court of First Instance and the Court of Appeal of the High Court, and the judges of the Court of Final Appeal, and may also designate a number of judges from deputy judges or recorders, to handle cases concerning offences endangering national security.

(VI) It clearly provides for an office for safeguarding national security of the CPG in the HKSAR. (1) The CPG shall establish in the HKSAR an office for safeguarding national security. The Office for

Safeguarding National Security of the CPG in the HKSAR (“CPG Office on National Security”) shall perform its mandate for safeguarding national security and exercise relevant powers in accordance with the law.

(2) The CPG Office on National Security shall perform the following mandate: analyzing 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; overseeing, guiding, coordinating with, and providing support to the HKSAR in the performance of its duties for safeguarding national security; collecting and analyzing intelligence and information concerning national security; and handling cases concerning offences endangering national security in accordance with the law. (3) The CPG Office on National Security shall perform its mandate in strict compliance with the law and be subject to supervision in accordance with the law. It shall not infringe upon the lawful rights and interests of any individual or organization. The staff of the Office shall abide by the laws of the HKSAR as well as national laws. (4) The CPG Office on National Security shall establish a mechanism of coordination with the HKSAR Committee on National Security to oversee and provide guidance on the work of the HKSAR for safeguarding national security. The working departments of the Office shall establish mechanisms for collaboration with the law enforcement and judicial authorities of the HKSAR responsible for safeguarding national security to enhance information sharing and operations coordination.

The Draft also clearly stipulates the jurisdiction and procedure of the CPG Office on National Security and of the relevant State authorities under specified circumstances. It needs explanation that it is an important manifestation of the Central Authorities’ overall jurisdiction that the CPG Office on National Security and the relevant national

authorities shall, under specified circumstances, exercise jurisdiction over an extremely small minority of criminal cases which endanger national security. This is conducive to supporting and strengthening the HKSAR's law enforcement and judicial work for safeguarding national security. This is also conducive to avoiding the possibility or result of a state of emergency as provided under Article 18(4) of the Basic Law of the HKSAR.

The supplementary provisions of the Draft stipulate that: [t]his Law shall prevail where provisions of the local laws of the HKSAR are inconsistent with this Law; the power of interpretation of this Law shall be vested in the NPC Standing Committee.

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