

(English translation)

**Report on the prohibition of the operation of the
“Hong Kong National Party” by the Hong Kong Special
Administrative Region Government and related circumstances**

Purpose

Upon the request of the Central People’s Government (“CPG”) in its letter of 26 February 2019 (State Letter No. 19 of 2019), this report seeks to report to the CPG on the prohibition of the operation of the “Hong Kong National Party” (“HKNP”) by the Hong Kong Special Administrative Region (“HKSAR/Hong Kong”) Government in accordance with the law and related circumstances.

Background

2. Hong Kong has been part of the territory of China since ancient times. The Preamble of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China (“Basic Law”) clearly states that the HKSAR is established in accordance with the provisions of Article 31 of the Constitution of the People’s Republic of China, and under the principle of “one country, two systems”. Article 1 of the Basic Law stipulates that the HKSAR is an inalienable part of the People’s Republic of China. Article 2 of the Basic Law stipulates that the National People’s Congress authorizes the HKSAR to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication, in accordance with the provisions of the Basic Law. Article 12 of the Basic Law stipulates that the HKSAR shall be a local administrative region of the People’s Republic of China, which shall enjoy a high degree of autonomy and come directly under the CPG. Article 23 of the Basic Law stipulates that the HKSAR shall enact laws on its own to prohibit seven types of acts that endanger national security. Article 159(4) also clearly states that no amendment to the Basic Law shall contravene the established basic policies of the People’s Republic of China regarding Hong Kong. The HKSAR has the constitutional responsibility to safeguard national security.

3. Section 8 of the Societies Ordinance (Cap. 151, Laws of Hong Kong) empowers the Secretary for Security (“the Secretary”) to make an order prohibiting the operation or continued operation of societies in Hong Kong if it is necessary in the interests of national security or public safety,

public order or the protection of the rights and freedoms of others. The section also provides that the office-bearer or member of the society may appeal to the Chief Executive in Council (“CE in C”) against the making of the order by the Secretary, and the CE in C may confirm, vary or revoke the order. The full text of section 8 of the Societies Ordinance is as follows:

“8. Prohibition of operation of societies

- (1) The Societies Officer may recommend to the Secretary for Security to make an order prohibiting the operation or continued operation of the society or the branch—
 - (a) if he reasonably believes that the prohibition of the operation or continued operation of a society or a branch is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others; or
 - (b) if the society or the branch is a political body that has a connection with a foreign political organization or a political organization of Taiwan.
- (2) On the recommendation by the Societies Officer under subsection (1), the Secretary for Security may by order published in the Gazette prohibit the operation or continued operation of the society or the branch in Hong Kong.
- (3) The Secretary for Security shall not make an order under subsection (2) without first affording the society or the branch an opportunity to be heard or to make representations in writing as the society or the branch thinks fit as to why such an order should not be made.
- (4) Subsection (3) shall not apply where the Secretary for Security reasonably believes that affording the society or the branch an opportunity to be heard or to make representations in writing would not be practicable in the circumstances of that case.
- (5) An order made under subsection (2) shall as soon as practicable be—
 - (a) served on the society or the branch;

- (b) (where the society or the branch occupies or uses any building or premises) affixed in a conspicuous manner on any building or premises occupied or used as a place of meeting by the society or the branch and at the nearest police station of the police district in which such building or premises are situated; and
 - (c) published in the Gazette.
- (6) An order made under subsection (2) shall take effect on publication in the Gazette or, if the order specifies a subsequent date for its taking effect, shall take effect on that specified date, notwithstanding that an appeal has been or may be made against the order under subsection (7).
- (7) A society or a branch in relation to which an order is made under this section and any office-bearer or member of the society or the branch who is aggrieved by an order of the Secretary for Security made under this section may appeal to the Chief Executive in Council against the making of the order within 30 days after the order takes effect and the Chief Executive in Council may confirm, vary or revoke the order.”

4. On 24 September 2018, the Secretary by order published in the Gazette prohibited the operation or continued operation of the HKNP in Hong Kong as it was necessary in the interests of national security, public safety, public order and the protection of the rights and freedoms of others. The Spokesman and Convenor of the society subsequently appealed to the CE in C on 24 October 2018 in accordance with the Societies Ordinance. On 19 February 2019, the CE in C decided to dismiss the appeals and confirm the order by the Secretary. On 21 February 2019, the Clerk to the Executive Council notified the society and the Secretary of the decision.

5. On 26 February 2019, the CPG issued a letter to the Chief Executive in support of the HKSAR Government in prohibiting the operation of the HKNP in accordance with the law. The letter reiterates that in accordance with the Constitution of the People’s Republic of China and the Basic Law, the HKSAR has the constitutional responsibility to safeguard national security in accordance with the law. It is the duty of the HKSAR Government, and the shared obligation of all Chinese people,

including the compatriots in Hong Kong, to safeguard the sovereignty and unity as well as territorial integrity of the country. The letter states that the Chief Executive of the HKSAR is accountable to the CPG and the HKSAR in accordance with the law, requesting the Chief Executive to submit a report to the CPG regarding the prohibition of the operation of the HKNP in accordance with the law and related circumstances.

Summary of the process of prohibiting the operation of the HKNP

Recommendation by an Assistant Societies Officer of the Police

6. On 28 May 2018, an Assistant Societies Officer (“ASO”) of the Hong Kong Police Force made a recommendation to the Secretary, John Lee Ka Chiu, to prohibit the operation or continued operation of the HKNP. The ASO pointed out that the HKNP was established on 28 March 2016, and its published objects were: (a) establish a free and independent Republic of Hong Kong; (b) safeguard the interests of Hong Kong people and maintain the interest of Hong Kong nation as orientation; (c) consolidate the Hong Kong national awareness and define the definition of Hong Kong citizens; (d) support and participate in all effective resistance actions; (e) nullify the Basic Law which is not authorized by Hong Kong people and the Hong Kong Constitution must be formulated by the Hong Kong nation; and (f) establish forces in support of the independence of Hong Kong, set up Hong Kong-oriented associations and political pressure groups in various fields such as economic, culture, education, etc., and lay the foundation for self-determination forces. In the two years or so since its establishment, the HKNP has been taking actual steps to achieve its objects. Such actions included: application for company registration and incorporating the above objects into the articles of association¹; its Convenor’s application to participate in the Legislative Council election to obtain resources for the HKNP, solicit support from foreign countries and expand its platform for propaganda; propaganda through the press, radio and online means; implementation of the “Secondary School Political Enlightenment Scheme” targeting young people; setting up street booths; fund raising; recruitment of members; publication of *Comitium* the periodical; and overseas visits on various occasions to establish connections with overseas organisations to seek collaboration and support, etc.

¹ The HKNP bought a company called C&N Limited before its establishment, and subsequently filed an application to the Companies Registry to change the name of the company to “Hong Kong National Party Limited” and to include the six stated objects into the company’s Articles of Association. The Companies Registry refused the application by the HKNP. The HKNP has lodged an appeal against the decision of the Companies Registry.

7. The ASO, in accordance with section 8(1)(a) of the Societies Ordinance, recommended the Secretary to make an order prohibiting the operation or continued operation of the society as she reasonably believed that the prohibition of the operation or continued operation of the HKNP was necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others.

Representations by the HKNP

8. On 17 July 2018, the Secretary wrote to the HKNP and the two known office-bearers of the society (i.e. its Convenor and Spokesman), notifying the society of the ASO's recommendation to the Secretary to prohibit the operation or continued operation of the HKNP, and affording the society an opportunity under section 8(3) of the Societies Ordinance to make representations as the society thinks fit as to why such an order should not be made.

9. On the same day, the Secretary informed the public that a letter was issued to the HKNP under section 8 of the Societies Ordinance, affording it an opportunity to make representations, and explained the relevant provisions and procedures under the Societies Ordinance. The Secretary pointed out that people in Hong Kong had the freedom of association, but this right was not completely without restrictions. The Hong Kong Bill of Rights Ordinance clearly stated that restrictions could be prescribed by law to protect national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. The Secretary also pointed out that the provisions concerning freedom of association in the Hong Kong Bill of Rights Ordinance were consistent with the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong.

10. During the representation period, the Convenor of the HKNP gave a talk on 14 August 2018 to the local and international press at the luncheon of the Hong Kong Foreign Correspondents' Club to promote its advocacy for "Hong Kong independence". Subsequently, the HKNP wrote to the President of the United States on 18 August 2018 to escalate the advocacy of "Hong Kong independence" to the international level, making it clear that "a weakened China would be beneficial to the survival of the HKNP".

11. The ASO submitted additional information to the Secretary on 28 August to further support her recommendation to the Secretary to exercise his power under section 8 of the Societies Ordinance to make an order to prohibit the operation of the HKNP. The Secretary subsequently notified the legal representatives of the HKNP's Convenor and Spokesman in writing, and provided such information to the HKNP for the purpose of making written representations as it thinks fit.

12. During the representation period, the Convenor and Spokesman of the HKNP had, through their legal representatives, made multiple requests for extension of time. Having considered such requests, the Secretary had thrice extended the deadline for representation. On 14 September 2018, the Secretary received the written representations submitted by the HKNP's Convenor and Spokesman through their respective legal representatives.

Order by the Secretary

13. Having duly considered the ASO's recommendations and the HKNP's representations, the Secretary made an order under section 8(2) of the Societies Ordinance on 24 September 2018 to prohibit the operation or continued operation of the HKNP in the interests of national security, public safety, public order, and the protection of the rights and freedoms of others. The order was published in the Gazette on the same day and took immediate effect. The HKNP became an unlawful society. According to section 8(7) of the Societies Ordinance, the office-bearers or members of the HKNP may appeal to the CE in C within 30 days after the order took effect. During the appeal period, the Secretary's order shall remain effective.

14. The Secretary notified the HKNP, its Convenor and Spokesman, as well as their legal representatives in writing on the same day, and provided the full text of his decision of making the order to the HKNP. The original text of the Secretary's decision, written in English, is at **Annex 1**.

15. On the day of gazettal, the Secretary informed the public of his decision and briefly explained some of the factors for consideration in making the decision: -

- (a) The HKNP was established on 28 March 2016. Its published objects included: establish an independent Republic of Hong Kong; maintain the interest of Hong Kong nation as orientation; consolidate the Hong Kong national awareness; support and participate in all effective resistance actions; nullify the Basic Law which is not authorized by Hong Kong people and the Hong Kong Constitution must be formulated by the Hong Kong nation; and establish forces in support of the independence of Hong Kong, set up Hong Kong-oriented associations and political pressure groups in various fields such as economic, culture, education, etc., and lay the foundation for self-determination forces. These objects seriously contradict the Basic Law, including its Preamble, Articles 1, 2, 12 and 159(4);
- (b) In the two years or so since its establishment, HKNP had been taking actual steps, and has put in place a four-year plan, to gradually achieve its objectives. For example, the HKNP applied for company registration and attempted to incorporate the said objects into the articles of association; its Convenor's applied for participating in the Legislative Council election to obtain resources and solicit overseas support for the HKNP, and to expand its platform for propaganda; HKNP's propaganda through the press, radio and online means; implementation of the "Secondary School Political Enlightenment Scheme" targeting young people; setting up street booths; fund raising; recruitment of members; publication of *Comitium* the periodical; and overseas visits on various occasions to establish connections with overseas organizations to seek collaboration and support, with a view to achieving its objects. The HKNP also gave a talk to the local and international journalists to raise the profile of its advocacy for "Hong Kong independence", and wrote to the President of the United States to escalate the advocacy of "Hong Kong independence" to the international level, stating that "a weakened China would be beneficial to the survival of the HKNP". The objectives, plans and acts of the HKNP apparently endangered national security.
- (c) The HKNP had publicly indicated on multiple occasions that it would use whatever effective means, including the use of force (or even armed revolution), infiltration into various sectors,

etc., to achieve the independence of Hong Kong. Even though the HKNP had so far not actually resorted to violence, and its Convenor had also said on certain occasions that the society would resort to non-violent means to achieve “Hong Kong independence”, since the society had stated on a number of occasions in the past that it would use all effective means of resistance to pursue “Hong Kong independence”, and had not excluded the possibility of using force, and had even encouraged its supporters to use force, the Secretary could not dismiss such as mere political rhetoric without regard to their threat to public safety and public order.

- (d) The HKNP had, on repeated occasions, publicly advocated its antipathy for and discrimination against people of Mainland Chinese origin in Hong Kong. The HKNP had openly stated that China was the “colonizer” of Hong Kong, that people of Mainland Chinese origin were the enemies of Hong Kong, and advocated denial of and hostility to Chinese people, extinction of Chinese people in Hong Kong, making Hong Kong a place without Chinese people, and permanently separating Hong Kong from China. Promotion of such hatred and discrimination by the HKNP, in the context of its open statement to use whatever means to establish an independent Republic of Hong Kong with Chinese people in extinction as its objective, would threaten the rights and freedoms of others.

16. The considerations given by the Secretary were prudent, careful and comprehensive. The Secretary’s decision has taken into account not only the individual words or deeds or advocacy of the HKNP, but the case of the HKNP in totality, including its acts, plans and objectives in the past two years or so, and the threats of allowing its continued operation. In addition to the provisions of the Societies Ordinance, the Secretary has duly considered the provisions of the Basic Law, Hong Kong Bill of Rights Ordinance and the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong, as well as the need of national security, public safety, public order, the protection of the rights and freedoms of others.

17. Upon gazettal of the order prohibiting the operation of the HKNP, the provisions concerning unlawful societies under the Societies Ordinance are applicable to the HKNP with immediate effect. The offences include: managing or assisting in the management of an unlawful

society; acting as a member of an unlawful society, or attending a meeting of an unlawful society, or paying money or giving any aid to an unlawful society; knowingly allowing a meeting of an unlawful society, or of members of an unlawful society, to be held in premises belonging to or occupied by him, or over which he has control; inciting, inducing or inviting another person to become a member of or assist in the management of an unlawful society; and procuring subscription or aid for the purposes of an unlawful society. The penalties of these offences include fine and imprisonment, with a maximum period of imprisonment of two to three years. Law enforcement agencies will deal with any suspected contravention in accordance with the law.

Decision by the CE in C

18. The Spokesman and Convenor of the HKNP (“the appeal applicants”) on 24 October 2018 appealed to the CE in C pursuant to section 8(7) of the Societies Ordinance against the making of the order by the Secretary to prohibit the operation of the HKNP. In considering their appeals, the CE in C may confirm, vary or revoke the order made by the Secretary.

19. The CE in C on 4 December 2018 appointed a committee comprising three members of the Executive Council under Rule 9 of the Administrative Appeals Rules (subsidiary legislation A of Cap. 1, Laws of Hong Kong) to hear the appeals lodged by the two appeal applicants. In accordance with Rule 10 of the Administrative Appeals Rules, the function of the committee is to advise the CE in C as to the decision that should be made in the appeals.

20. The committee conducted a hearing on 14 January 2019. The CE in C, having considered the advice of the committee, decided on 19 February 2019 to confirm the order by the Secretary. The Clerk to the Executive Council informed the two appeal applicants and the Secretary as the respondent of the said decision in writing on 21 February 2019. A copy of the letter from the Clerk to the Executive Council is at **Annex 2**.

21. The CE in C agreed that the HKNP’s objectives, including the establishment of a Republic of Hong Kong, were clearly against the Basic Law and the constitutional order of “one country, two systems”, and noted that the HKNP did not stop at thoughts and words, but had taken actual actions to achieve its objectives.

22. The CE in C accepted the committee's advice that the HKNP had openly stated on multiple occasions that it would not exclude resorting to violence or encouraging its supporters to use violence to achieve "Hong Kong independence". Further, the HKNP had a history of openly advocating hostilities towards people of Mainland Chinese origin.

23. Having given due consideration to the rights of the HKNP and the two appeal applicants, as well as the totality of the evidence and materials, the CE in C took the view that the Secretary had solid reasons to make the order to prohibit the operation of the HKNP as it was necessary in the interests of national security, public safety, public order, and the protection of the rights and freedoms of others.

Conclusion

24. The HKSAR has the responsibility to safeguard national security. The stance of the HKSAR Government on "Hong Kong independence" is very clear and unambiguous. "Hong Kong independence" is inconsistent with the constitutional and legal status of the HKSAR under the Basic Law, as well as the established basic policies of the People's Republic of China regarding Hong Kong. Any act undermining national security is not in the interest of the nation, and would bring turmoil to the Hong Kong society. The HKSAR Government will continue to prohibit any act and activity endangering national security (including "Hong Kong independence") in the HKSAR in strict accordance with the Basic Law and relevant laws, safeguarding the interests of national security.

Annex 1

Full text of the decision by the Secretary

The contents of this part are not published, but the full text of the decision was issued to the HKNP, its Convenor and Spokesman, as well as their legal representatives on 24 September 2018.

Annex 2

A copy of the letter from the Clerk to the Executive Council

The contents of this part are not published, but the letter was issued to the legal representatives of the Convenor and Spokesman of the HKNP, as well as the Secretary on 21 February 2019.