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創會會長

Security Bureau
10/F, East Wing, Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

27 February 2024

Executive Board Members
執行委員會

Helen Kan
President
簡佩秋
會長

Dear Sirs,

Public consultation on the Basic Law Article 23 Legislation (“Consultation Paper”)

Grace Tse
Vice President
謝佩欣
副會長

We refer to the Consultation Paper on proposals to enact Basic Law Article 23 Legislation (“Proposals”). On behalf of the Hong Kong Women Professional and Entrepreneurs Association (“HKWPEA”), we set out our comments below to the consultation (“Consultation”).

Janice Tsang
Vice President
曾詠恆
副會長

As a non-profit organization representing local women professionals and entrepreneurs, HKWPEA is aware of the importance of Hong Kong’s hard-earned position as an international financial centre. Over the last 23 years, HKWPEA strives to make timely responses to consultation by the HKSAR government and regulators. The views expressed in this submission are those of HKWPEA, based on consultation with our members, which include women professionals, business executives and entrepreneurs.

Louisa Lui
Vice President
呂淑瓊
副會長

It is Hong Kong's constitutional duty to enact legislation to implement Article 23 of the Basic Law, which provides the legal basis for safeguarding national security. We firmly believe that, while fulfilling the above constitutional responsibility and addressing and preventing risks and threats that jeopardize national security, legislation must also provide protection for Hong Kong's commercial activities and appeal as an international city, and the daily lives of Hong Kong people, including but not limited to appropriate protection for the rights under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Cindy Chan
Honourary Secretary
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We support the HKSAR Government in consulting and explaining the contents of the legislation to various sectors of the community, so that the public can understand the relevant legislation more easily and avoid unnecessary misunderstanding and panic. It is vital for Hong Kong as an international financial centre to be positioned at the forefront of enhancing confidence in the investment, commercial, and social environment offered by Hong Kong.

Yolanda Ng, MH
伍婉婷, MH

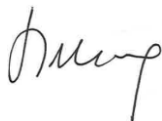
HKWPEA has set up a task force to discuss the Consultation Paper. Views expressed herein are in line with HKWPEA’s position on the relevant issues (though not necessarily that of each and every member).

Julianne Doe
杜珠聯

Joyce Cheng
鄭程

Our response is set out below. Should you have any questions, please feel free to contact Helen Kan, President, at 9886 3333.

Yours Faithfully,



Helen Kan
President
Hong Kong Women Professionals & Entrepreneurs Association

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Response to Consultation

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1. Certainty

The proposed legislation to safeguard national security carries severe criminal penalties. Hong Kong is an international financial centre which has always thrived on the ability to provide a transparent and clear system of law where citizens are able to conduct their daily lives with confidence and with full understanding of their rights and obligations. Multinationals and overseas companies also require certainty in the law in order to feel safe in locating their businesses in Hong Kong and they also require such certainty in order to be able to instruct how their personnel should conduct themselves in carrying on business in Hong Kong. Consequently, the legislation must be scrutinized carefully to remove ambiguities and uncertainties which may have a severe negative effect on citizens and businesses.

For example, if an act by an individual or an entity would trigger national security charge, or increase the likelihood of criminal charge under other existing legislations, it would be helpful to individuals / senior decision-makers of entities to increase understanding if HKSAR Government can provide examples of such acts to the public.

2. External Perceptions and Reaching out to the Business and Local Community

We believe that the government's efforts in stating that Hong Kong is back, or that Hong Kong is a safe place to do business, can easily be frustrated by external narrative which may exaggerate the impact of the Proposals and scaring citizens of Hong Kong and keeping away multinationals. The recent news of Latham & Watkins, a US law firm with offices in Hong Kong and other global locations serves as a stark reminder that national security issues may be dominated by negative news and generate negative impressions. As reported by the Financial Times, Latham & Watkins is cutting off automatic access to its international databases for its Hong Kong-based lawyers, who will not be able to see content in its international (US, Europe, Middle East and Asia (except China)) databases unless specifically given permission.

Regardless of whether the actions of the law firm were justified or necessary, the situation is particularly challenging when extended from professional firms to multinational financial institutions who may have cross jurisdictional needs to maintain data flow. If Hong Kong is seen as a dangerous place to have access to any international information (even though for legitimate law enforcement purposes), Hong Kong will become increasingly isolated and its position as an international financial centre will be in danger.

It is therefore necessary for the government to go beyond the publication of literature to listen and explain the Proposals. An open-minded, professional disposition on the part of the SAR government in the current consultation actually would serve to inspire confidence and reduce speculation, especially for those who may have genuine concerns and who can contribute in Hong Kong. We believe that the government MUST take the initiative to personally approach multinationals to hold individualised sessions (not just town hall) to address concerns which may be different from company to company, industry to industry.

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For regulated industries, we recommend the regulators to take the lead to inform and provide industry-specific guidelines, as appropriate, to entities regulated by them. As there are usually established relationships between the regulators and the regulated entities, it would make dissemination of information and addressing of potential concerns more efficient and effective. At least these must be done as PREVENTIVE measures because once negative news such as the Latham & Watkins news is released, then the measure may be too late to change public views. It may also prevent multinationals from taking uncalled-for, drastic measures.

Other than being an international financial centre, HK is also a cosmopolitan city in China bestowed with special administrative rights under One Country Two systems. Hong Kong will be better able to contribute to the whole of the PRC, and attract/retain citizens, as well as expatriates and multi-nationals, if we continue to be able to appeal as a safe, cosmopolitan city. We are fighting a battle where negative perceptions which dominate the global narrative can be powerful and irreversibly damaging, even though they may not be true.

Specific Responses:

1. We refer to the recommendation that the offences relating to “seditious intention” should cover intentions:
 - to incite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter established in accordance with the law in the HKSAR;
 - to incite any other person to do a violent act in the HKSAR;
 - to incite any other person to do an act that does not comply with the law of the HKSAR or that does not obey an order issued under the law of the HKSAR.

We believe that because the above-stated intentions are generally worded, there is a danger that the law would be regarded as being uncertain. Accordingly, we would recommend more guidelines and transparency as to the acts which would demonstrate such intention.

For example, if a violent act under “to incite any other person to do a violent act in the HKSAR” is directed at a violent act against one person, or even a small group of persons (eg gang fights) with reasons unrelated to national security, then such offences should be sufficiently covered by other criminal related offences. The reference to such incitement must clearly relate to the specified offences of national security.

2. References to “intention” – references to intentions need to be treated carefully and it is necessary to make reference to the standard of proof required under Hong Kong criminal law.
3. Periods of detention – we believe that to detain persons for periods beyond what is general for criminal law may need to be reconsidered as this encroaches on personal liberties which are safeguarded by the Basic Law. We recommend that any discretion to do so must only be done with respect to the most serious of offences under the Proposals and that there be express legislation in this regard.
4. Offence of “external interference” – we note that one element of this offence is: “With intent to bring about an interference effect as follows, collaborating with an external force to engage in a conduct, and using improper means when engaging in the conduct ...”

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Here, and elsewhere where the word appears, the use of the word “improper” as opposed to “unlawful”, is proposed to include various circumstances:

(paragraph 7.6) “Using improper means” can cover the following circumstances –

- (i) **knowingly making a material misrepresentation;**
- (ii) **using or threatening to use violence against a person;**
- (iii) **destroying or damaging, or threatening to destroy or damage, a person’s property;**
- (iv) **causing financial loss to a person, or threatening to cause financial loss to a person;**
- (v) **damaging or threatening to damage a person’s reputation;**
- (vi) **causing spiritual injury to, or placing undue spiritual pressure on, a person;**
- (vii) **the conduct constituting an offence.**

These “improper” circumstances include actions which would cover both civil liability actions (causing financial loss, since no additional “fraud” element is included) and criminal liability actions (destroying or damaging, or threatening to destroy or damage, a person’s property), therefore again a difference needs to be drawn between the standards of proof required to establish the committing of such actions.

It is also vital to establish what the term “improper” is intended to mean. Stated as a term which is non-exhaustive, this is exactly the type of terminology that opens Hong Kong to attack from those who seek to allege that Hong Kong legislation is deliberately vague in order for law enforcement to be randomly exercised.

As an organisation with women from all walks of business and professions, we are mindful that the previous negative stigma attached to Article 23 of the Basic Law and now the proposals to legislate for Articles 23, requires a battle against inaccurate perceptions and a negative narrative. It therefore takes more, and more patient, efforts to “sell” it.

This goes beyond simply explaining the proposed law, but also its serious impact and the specific situations where it would be applied. We need to overcome what is now a widely misguided (but unfortunately globally circulated) narrative which appears at times to be that the legislation is simply a way to tighten the control of freedoms in Hong Kong.

We positively support the critical need and the duty to legislate for national security. Our comments aim to achieve the goal of bolstering Hong Kong’s defence against attempted political manipulation and negative narrative from outside. If our own citizens and community at large can further understand and embrace the proposals, they would be the best ambassadors to alleviate the concerns of their international/multinational friends and communities.

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