

LCQ2: Addition to or deletion from the list of laws in Annex III to Basic Law

Following is a question by the Hon Tanya Chan and a reply by the Secretary for Constitutional and Mainland Affairs, Mr Erick Tsang Kwok-wai, in the Legislative Council today (June 17):

Question:

Article 18 of the Basic Law stipulates that the laws listed in Annex III shall be applied locally by way of promulgation or legislation by the Hong Kong Special Administrative Region (SAR). The Standing Committee of the National People's Congress (NPCSC) may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region (BLC) and the SAR Government. In this connection, will the Government inform this Council:

- (1) whether it knows the specific criteria or legal provisions based on which NPCSC determines whether a certain piece of national law shall be applied in SAR by way of promulgation or by way of legislation; whether, under the SAR legal system, there is a difference in the status of the laws applied by the two different ways mentioned above;
- (2) whether it knows the procedure adopted by NPCSC for consulting BLC and the SAR Government in respect of the addition to or deletion from the list of laws in Annex III to the Basic Law, including the stage at which the consultation is to take place; whether such a consultation procedure is also applicable to the amendments made to the provisions of the laws listed in Annex III; and
- (3) as the SAR Government indicated in its reply to a question raised by a Member of this Council in February 1999 that "in future, if any national law proposed to be added to Annex III to the Basic Law has any practical effect in the SAR, we will refer the issue concerned to the relevant Legislative Council panel for discussion", whether the SAR Government still adopts such a practice at present?

Reply:

President,

Having consulted the relevant bureau and department, our consolidated reply to Hon Tanya Chan's question is as follows:

The National People's Congress (NPC) is the highest state organ of power of the People's Republic of China. In accordance with Article 62 of the Constitution of the People's Republic of China (Constitution), the NPC exercises the function and power of enacting and amending laws. The Hong Kong Special Administrative Region (HKSAR) was established by the "Decision of the National People's Congress on the Establishment of the HKSAR" adopted

in accordance with Article 31 of the Constitution on April 4, 1990. The NPC adopted the Basic Law of the HKSAR of the People's Republic of China (Basic Law) as a national law in accordance with Articles 31 and 62 (14) of the Constitution.

Article 2 of the Basic Law stipulates that "the NPC authorises 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 18 of the Basic Law stipulates that "national laws shall not be applied in the HKSAR except for those listed in Annex III to the Basic Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the HKSAR. The Standing Committee of the National People's Congress (NPCSC) may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the HKSAR and the government of the HKSAR. Laws listed in Annex III to the Basic Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the HKSAR as specified by the Basic Law".

Article 13 of the Basic Law stipulates that "the Central People's Government shall be responsible for the foreign affairs relating to the HKSAR", whereas Article 14 of the Basic Law stipulates that "the Central People's Government shall be responsible for the defence of the HKSAR". These are examples of matters outside the limits of the autonomy of the HKSAR. In accordance with the Basic Law, the HKSAR exercises a high degree of autonomy in many areas, especially with respect to the economy. Various provisions in Chapter V of the Basic Law provide for the high degree of autonomy of the HKSAR in public finance, monetary affairs, trade, industry and commerce. The most representative ones include Article 108 of the Basic Law, which stipulates that "the HKSAR shall practise an independent taxation system"; Article 111, which stipulates that "the Hong Kong dollar, as the legal tender in the HKSAR, shall continue to circulate"; and Article 114, which stipulates that "the HKSAR shall maintain the status of a free port". These are clearly matters within the limits of the autonomy of the HKSAR.

Since Hong Kong's return to the Motherland, the NPCSC has made additions to or deletion from the list of laws listed in Annex III to the Basic Law four times, including: (1) adding the Law of the People's Republic of China on the National Flag, the Regulations of the People's Republic of China concerning Consular Privileges and Immunities, the Law of the People's Republic of China on the National Emblem, the Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, and the Law of the People's Republic of China on the Garrisoning of the HKSAR, as well as deleting the Order on the National Emblem of the People's Republic of China Proclaimed by the Central People's Government (Attached: Design of the national emblem, notes of explanation and instructions for use) on July 1, 1997; (2) adding the Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf on November 4, 1998; (3) adding the Law of the People's Republic of China on Judicial Immunity from Compulsory Measures Concerning the Property of Foreign Central Banks on October 27, 2005; and (4) adding the Law of the People's Republic of China on the

National Anthem on November 4, 2017.

The NPCSC may add to or delete from the list of national laws in Annex III in consultation with its Committee for the Basic Law of the HKSAR and the government of the HKSAR in accordance with the provisions and relevant procedures stipulated in Article 18 of the Basic Law. The national laws listed in Annex III to the Basic Law, regardless of being applied by way of promulgation or legislation, are laws applied in Hong Kong and have legal effect. The national laws currently listed in Annex III to the Basic Law have not been amended since their inclusion in Annex III.

When exercising its legislative power conferred by the Constitution to enact laws, the NPCSC also has to abide by the rules stipulated in Chinese laws such as the Legislation Law of the People's Republic of China. The HKSAR government cannot answer questions relating to the enactment of laws by the NPCSC and the criteria for making relevant decisions on behalf of the NPCSC. If there is a need to amend any national laws listed in Annex III to the Basic Law, it will be led by the NPC or the NPCSC in accordance with their powers conferred by law.

For national law(s) to be added to Annex III to the Basic Law in future, the NPCSC will consult the Committee of the Basic Law and the HKSAR government in accordance with Article 18 of the Basic Law. The HKSAR government will listen to the views of different sectors having regard to actual circumstances and the subject matter concerned, and will duly reflect the actual situation in Hong Kong and specific views when being consulted by the NPCSC.

Thank you President.