

Panel on Constitutional Affairs

**Response to the Points Raised at the meeting on 19 October 1998 on
Adminstration's Paper entitled "Relationship between the HKSAR
Government and the Central People's Government"**

**List of "State" organs stationed in Hong Kong, their functions and personnel
Working relationship between Xinhua News Agency (Hong Kong Branch) and
HKSARG (Items (a), (b) and (d))**

As stated at the LegCo Constitutional Affairs Panel meeting on 19 October, a list of the "State" organs stationed in Hong Kong is as follows -

- (i) The Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China;
- (ii) The People's Liberation Army garrison in Hong Kong; and
- (iii) Xinhua News Agency (Hong Kong Branch).

2. As to the functions and personnel of the "State" organs stationed in Hong Kong, according to Chapter One of the Laws of Hong Kong (Cap. 1), any subordinate organ of the Central Government is only within the Cap. 1 definition of "State" if it satisfies the following three conditions -

- (i) it carries out executive functions of the Central People's Government (CPG), or functions for which the CPG has responsibility for under the Basic Law;
- (ii) it does not exercise commercial functions; and
- (iii) it is acting within the scope of the authority and functions delegated to it by the CPG or the relevant Central Authorities.

Organisations that exercise commercial functions, or that are not subordinate organs of the CPG or the relevant Central Authorities, will not be within the definition of “State”. As such, state enterprises, provincial authorities, autonomous regions and municipalities directly under the Central Government are outside the definition. It would be for the organisations or their personnel to provide proof if they claim to satisfy the definition of “State”.

3. After the reunification, liaison and coordination for exchanges between the HKSARG and the Mainland authorities are primarily conducted through the Hong Kong and Macao Affairs Office (HKMAO). Liaison with the New China News Agency (NCNA) has therefore reduced significantly.

Role of the Chinese Communist Party and whether its existence affects HKSAR’s autonomy (Item (c))

4. As stated above, there are three “State” organs stationed in Hong Kong. The Chinese Communist Party is not one of them. Any organisations in the HKSAR must abide by the laws of the HKSAR, and there is no question of the HKSAR’s autonomy being affected by any of such organisations.

Beijing Office: An Additional Channel of Communication between the HKSAR and the Mainland (item (e))

5. To ensure that Mainland authorities at all levels conduct business with the HKSARG in line with Article 22 of the Basic Law and the principle of “One Country, Two Systems”, the HKMAO of the State Council plays the role of a “gate-keeper” for the Mainland authorities at both the central and local levels. Since reunification, we have established a good working relationship with the HKMAO, and there have been frequent contacts between the officials on both sides. Such contacts include both visits and exchanges to enhance mutual understanding, and also exchanges and co-operation on practical matters in various fields.

6. Since the HKSARG has already established communication channels and working relationship with the HKMAO on practical matters, the setting up of the Beijing Office will provide an additional channel. It will further enhance the liaison and communication with the CPG and other provincial/municipal authorities, and deepen our mutual understanding. For instance, one of the functions of the Beijing Office will be to provide information about the HKSAR to the CPG, provincial/municipal authorities and Mainland non-governmental bodies to enable them to have a better understanding of developments in the HKSAR, with particular reference to how “One Country, Two Systems” and “Hong Kong people running Hong Kong” with “a high degree of autonomy” are being put into practice. At the same time, the Beijing Office will also keep the relevant bureaux and departments of the HKSARG informed about the latest developments in the Mainland, including changes in policy, new legislation and other developments, and evaluate their impact on the HKSAR.

The “Handling” of External Affairs (item (f))

7. In specific terms, HKSARG’s working contacts with the MFA Office in the handling of external affairs relate in the main to the following areas -

- (a) according to Articles 96, 133 and 155 of the Basic Law, the HKSARG may conclude agreements with foreign states on reciprocal juridical assistance, air services and visa abolition with the authorisation of the CPG. The HKSARG negotiates and concludes bilateral and multilateral agreements with foreign states and international organisations in accordance with the relevant provisions of the Basic Law and, as necessary, obtains CPG’s authorisation via the MFA Office;
- (b) according to Article 13 of the Basic Law, the CPG shall be responsible for the foreign affairs relating to the HKSAR. The HKSARG assists the CPG in fulfilling its international rights and obligations. For instance, where certain international conventions have been ratified and applied by

the CPG to the HKSAR, the HKSARG submits reports (if so required by such conventions) via the MFA Office to the CPG on the implementation of such conventions in the HKSAR. The reports are then submitted to the relevant treaty monitoring bodies by the CPG;

- (c) in accordance with the relevant provisions of the Basic Law, the HKSARG liaises with the CPG via the MFA Office as necessary on the participation of the HKSAR in international organisations and conferences. Article 152 of the Basic Law provides that for international organisations and conferences limited to states, HKSAR representatives may take part as members of the PRC delegation, or in such other capacity as may be permitted by the CPG and the international organisations and conferences concerned, and express their views using the name “Hong Kong, China”. In such cases, the HKSARG obtains the permission of the CPG via the MFA Office. If necessary, we may also submit the names of HKSAR representatives to the CPG via the MFA Office. As regards international organisations and conferences not limited to states, the HKSAR may attend on its own using the name “Hong Kong, China”;

- (d) Article 157 of the Basic Law provides that the establishment of foreign consular and other official or semi-official missions in the HKSAR shall require the permission of the CPG. According to Article 13 of the Basic Law, the CPG is responsible for foreign affairs matters relating to the setting up of consular missions (such as the establishment or abolition of missions, consular appointments, the granting of privileges and immunities, etc.). The day-to-day management of the consular corps (such as the issue of consular identity cards, actual provision of privileges and immunities, etc.) is the responsibility of the HKSARG. In order to handle consular matters properly, the HKSARG and the MFA Office need to maintain a close liaison with each other.

The Mainland authorities the HKSARG should contact in matters relating to Taiwan

8. We would liaise with the HKMAO when we need to contact Mainland authorities on matters relating to Taiwan. As stated above, the HKMAO is responsible for coordinating official contacts between the CPG and the HKSARG.