

National Security (Legislative Provisions) Bill
Proposed section 16A(1)(a) of the Official Secrets Ordinance:
Responsibility of the Central Authorities

For the purpose of the proposed section 16A(1)(a) of the Official Secrets Ordinance in the Bill, we note that both the Bar Association and Professor Johannes Chan have prepared lists of provisions in the Basic Law which appear to be related to “affairs concerning the HKSAR which are, under the Basic Law, within the responsibility of the Central Authorities” (Submission Nos. 53 and 155). We generally agree that the provisions listed are related to the category, and would like to supplement the following information.

2. It should be noted:

- (a) that the statement “affairs concerning the HKSAR which are, under the Basic Law, within the responsibility of the Central Authorities” should be construed within the framework of the Basic Law;
- (b) that in general terms, under the principle of “One Country, Two Systems”, the Central Authorities are responsible for foreign affairs and defence of the HKSAR and other aspects covered by the Basic Law; and
- (c) that ultimately, the definition of “affairs concerning the HKSAR which are, under the Basic Law, within the responsibility of the Central Authorities” is a matter for the courts to decide in adjudicating cases. Any lists of Basic Law provisions in relation to the definition should be regarded as illustrative only.

3. It is emphasized that a person who makes an unauthorized disclosure of information that relates to “affairs concerning the Hong Kong Special Administrative Region which are, under the Basic Law, within the responsibility of the Central Authorities” would only commit an offence if the disclosure is ‘damaging.’ Under the proposed section 16A of the Official Secrets Ordinance a disclosure is only damaging if it endangers, or would be likely to endanger, the safeguarding of the territorial integrity and independence of the People’s Republic of China.