

April 7, 2003

The Hon IP Kwok-him, JP
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Mr Ip,

National Security (Legislative Provisions) Bill

The Hong Kong General Chamber of Commerce (HKGCC) has taken a keen interest in the debate surrounding implementation of national security legislative requirements, as spelled out in Article 23 of the Basic Law. Our submission of November 1, 2002 supported legislation while raising a number of concerns as well as calling for a draft legislation to be available for public comment before a Blue Bill is submitted to the Legislative Council. The full text of the Submission is available on our web site, at www.chamber.org.hk/memberarea/chamber_view/others/article23.asp.

Now that the draft has been submitted to the Legislative Council, our Legal Committee has thoroughly studied the specific language of the Blue Bill, and our General Committee has discussed the recommendations. Therefore, we now would like to take this opportunity to share with you HKGCC's views on the Blue Bill.

In general many of the concerns raised in our November Submission have now been addressed, including our request for specific definitions. At the same time, we cannot help but recognise the continuing divisiveness within our society, and believe that the Legislative Council should proceed with deliberate care to assure the Hong Kong and international community that there has not been, nor will there be, any undue haste in passing such important legislation.

As for the specifics of the Blue Bill itself, we wish to bring to your attention a few points that raise concerns, or remain unclear. These are:

- Section 9C creates a separate offence of “seditious publication” with intent to incite. We find no justification for such an offence, as a person who does any act to demonstrate an intent to incite an offence could be punished as such (e.g. under Section 9A)
- Part IIA: We believe the existing laws have already provided for the necessary investigatory power and there is no need for any additional power.

- Section 2A (4)(b)(v): Unlike the preceding subsections (i) to (iv) which are clearly related to serious risks or damage to life or property, the language used in this subsection is capable of subjective interpretation and could give rise to concern internationally that it is open to abuse.
- Section 9D(3)(a) and (b): The language suggests that the mistakes, errors or defects are actual, i.e., capable of being proven in court. This necessarily restricts the defence and therefore impacts on the right of free speech.
- Section 8E: The safeguard against mis-proscription is assured by, among other things, the appeal mechanism. We note that the Chief Justice is expected to make rules for such appeals, which may require the appeal to be heard in the absence of the appellant and / or his legal representative. It will obviously alleviate the public concern if these rules can be made available as soon as possible, so that their applicability can be considered.

In making our observations, we have not lost sight of the fact that the ultimate safeguard against any abuse or misapplication of the Bill, and indeed any Hong Kong legislation, would lie with the judicial system. In this respect, we are confident that Hong Kong continues to enjoy judicial independence and to uphold the rule of law.

Conclusion

We fully acknowledge how sensitive the issues involved may be, and in this regard are encouraged by the very extensive discussion during the consultation period. As the legislative process proceeds, we hope that all parties will be as patient as necessary to ensure that key community concerns are seen to be addressed.

We believe the Blue Bill conforms to the Basic Law, which provides for basic rights and freedoms and the international covenants involving such rights and freedoms. These points need to be emphasised. We also believe that international recognition of the importance with which the people of Hong Kong hold these basic freedoms will promote and ensure the continuation of Hong Kong as a major international business and financial centre.

The National Security (Legislative Provisions) Bill is now in your hands, and Hong Kong is looking to the Legislative Council to allay the many concerns that have been raised, both here and abroad. The Chamber presents this submission in a constructive and sincere manner; it is our intention only to ensure Hong Kong has the best possible legislation. Thank you for allowing us to provide our views.

Yours sincerely,

Christopher Cheng
Chairman