

**Legislative Council Panel on  
Administration of Justice and Legal Services**

**Proposal to Amend the Criminal Procedure Ordinance (Cap. 221)**

**Government's Reply to the Submission from  
The Law Society of Hong Kong**

The Government's reply to the submission from The Law Society of Hong Kong ("**LSHK**") dated 9 May 2023 is set out below.

2. The Government notes that the LSHK has no objection in principle to the Government's proposal to introduce a statutory procedure for the prosecution to appeal by way of case stated against a verdict or order of acquittal given by the Court of First Instance constituted by a panel of three judges to try a case concerning offence endangering national security without a jury under Article 46 of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region ("**HK National Security Law**").

3. As to the human rights implications arising from the proposal, the Government has already set out its position in paragraph 15 of the consultation paper dated April 2023 (Annex A to discussion paper for the meeting of the Legislative Council Panel on the Administration of Justice and Legal Services on 22 May 2023 (ref: LC Paper No. CB(4)446/2023(02) ("**AJLS Panel Paper**")). See also paragraph 22 of the AJLS Panel Paper. In short, the Government's position is that:

- (1) The proposal will not have adverse implications on the rule of law, the court's independent judicial power or the defendant's right to a fair trial as guaranteed by the Basic Law and the Hong Kong Bill of Rights. The guilt or innocence of a defendant remains, as always, to be determined by the court exercising independent judicial power in accordance with law and evidence, and the defendant continues to enjoy the right to a fair trial both at trial and appellate stages.
- (2) The proposal does not contravene the principle against double jeopardy. Where the law provides for a mechanism for the prosecuting authorities to appeal against an acquittal and the time for appeal has not expired, the acquitted person has not been "finally acquitted" in accordance with the law, and hence the principle against double jeopardy under Article 5 of the HK National Security Law and Article 11(6) of the Hong Kong Bill of Rights is simply not engaged.

4. The Government notes the LSHK's suggestion on the period within which an application to state a case is to be made ("**appeal period**"). Our response is set out at item 2 of Annex B to the AJLS Panel Paper.

5. At present, the Government does not have intention to modify the appeal period for appeal by way of case stated arising from trials in the District Court and the Magistrates' Courts. We will reconsider the matter should a genuine need arise.

6. The LSHK correctly observed that no leave is required for appeal by way of case stated. It is not our policy intent to change this aspect of the appeal by way of case stated procedure.

**Department of Justice**  
**18 May 2023**