

LegCo Panel on the Administration of Justice and Legal Services

Mechanism for the setting up of “State” organs

At the meeting of the LegCo Panel on the Administration of Justice and Legal Services on 25 February, members requested that the Government should -

- (a) report the outcome of the Administration’s study on the mechanism and procedures for the SAR Government to give consent or otherwise for offices referred to in Article 22 of the Basic law to be set up in the SAR, and to publicise the establishment of such offices; and
 - (b) on the three “State” organs already stationed in Hong Kong, explain the procedures adopted for giving consent for their establishment in the SAR.
2. This paper sets out the Administration’s response to the above points.

The setting up of the three “State” organs in Hong Kong

3. Article 22 of the Basic Law states that -

“If there is a need for departments of the Central Government, or for provinces, autonomous regions, or municipalities directly under the Central Government to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of the Region and the approval of the Central People’s Government.”

4. Currently, there are three “State” organs in Hong Kong -

- (i) The Office of the Commissioner of the Ministry of Foreign Affairs of the People’s Republic of China in the HKSAR;

(ii) the Hong Kong Garrison of the Chinese People's Liberation Army (the Hong Kong Garrison); and

(iii) Xinhua News Agency (Hong Kong Branch).

5. The Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR was set up according to the provisions of Articles 13 of the Basic Law; and the Hong Kong Garrison was stationed in the HKSAR by the Central People's Government according to Article 14 of the Basic Law.

6. As for the Xinhua News Agency (Hong Kong Branch), it has been established in Hong Kong for over 50 years, and had been an organisation stationed by the Central People's Government in Hong Kong to carry out its functions. After reunification, the Xinhua News Agency (Hong Kong Branch) continues to exist as an authorised working organ of the Central People's Government.

7. As stated above, for the three "State" organs currently stationed in Hong Kong, namely the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the HKSAR, the Hong Kong Garrison and the Xinhua News Agency (Hong Kong Branch), the question of the HKSARG giving consent to their setup does not arise.

Proposed mechanism

8. Apart from the three "State" organs mentioned above, departments of the Central Government have not set up any other offices in Hong Kong. Neither have the provinces, autonomous regions or municipalities directly under the Central Government set up offices in the HKSAR. Should departments of the Central Government, the provinces, autonomous regions or municipalities directly under the Central Government need to set up offices in the HKSAR in future, they must obtain the consent of the HKSARG and the approval of the Central People's Government in accordance with Article 22 of the Basic Law.

9. For the three organs already set up in Hong Kong by the departments of the Central Government the Administration will publicise the information as to their establishment in the Gazette. If in future

other “State” organs are to be set up in Hong Kong, we would also publish such establishments in the Gazette.

Constitutional Affairs Bureau

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