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Rt Hon Boris Johnson MP,

Secretary of State for Foreign and Commonwealth Affairs

King Charles Street

London SW1A 2AH

15th november, 2016

Dear Sir,

The National People Congress Standing Committee (“NPCSC”) of the Peoples’ Republic of China (“PRC”) have “interpreted” Article 104 of the Hong Kong Basic Law (“HKBL”) on 7th Novemver,2016. The “interpretation” of the HKBL is *de facto* an amendment on it. The NPCSC did not amended the HKBL alone but also changing the meaning of words in local legislation of Hong Kong. The word “decline” under section 21 of Chapter 11 of the Hong Kong Law, Oath and Declaration Ordinance, is also amended. Article 8 of the HKBL stated that the common law shall be maintained; the court of Hong Kong shall have jurisdiction over the region is also written in Article 19. The NPCSC may, moreover, violated Article 22 and Article 158 of the HKBL with such action. Article 158 mentioned that the NPCSC could only interpret HKBL when the case is “concerning affairs which are the responsibility of the Central People’s Government, or concerning the relationship between the Central Authorities and the Region” under the request of the Court of Final Appeal, Hong Kong.

In a judicial review case that related to me (HCAL 185/2016), the Judgement from the Court of Instance, High Court, Hong Kong granted on 15th Nov. 2016, used exactly the same definition that the NPCSC “interpreted”. The following paragraph is a quote from it:

“On 7 November 2016, the Standing Committee of the National People’s Congress of the People’s Republic of China (“NPCSC”) in the exercise of its power under BL158(1) pronounced an interpretation (“the Interpretation”) of the meaning of BL104. The Interpretation is as follows:

- (1) Oath-taking is the legal prerequisite and required procedure for public officers specified in the Article to



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assume office. *No public office shall be assumed, no corresponding powers and functions shall be exercised, and no corresponding entitlements shall be enjoyed by anyone who fails to lawfully and validly take the oath or who declines to take the oath.*

- (2) *Oath-taking must comply with the legal requirements in respect of its form and content. An oath taker must take the oath sincerely and solemnly, and must accurately, completely and solemnly read out the oath prescribed by law, the content of which includes “will uphold the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, bear allegiance to the Hong Kong Special Administrative Region of the People’s Republic of China”.*
- (3) *An oath taker is disqualified forthwith from assuming the public office specified in the Article if he or she declines to take the oath. An oath taker who intentionally reads out words which do not accord with the wording of the oath prescribed by law, or takes the oath in a manner which is not sincere or not solemn, shall be treated as declining to take the oath. The oath so taken is invalid and the oath taker is disqualified forthwith from assuming the public office specified in the Article.*

The oath must be taken before the person authorized by law to administer the oath. *The person administering the oath has the duty to ensure that the oath is taken in a lawful manner. He or she shall determine that an oath taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is valid, and that an oath*



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which is not taken in compliance with this Interpretation and the requirements under the laws of the Hong Kong Special Administrative Region is invalid. If the oath taken is determined as invalid, no arrangement shall be made for retaking the oath.” (Paragraph 19)

“In the premises, the Interpretation is binding on this court. In this judgment, unless otherwise stated, whenever I refer to the meaning of BL104, it is a reference to the meaning as set out in the Interpretation.

Hence, essentially for the present purposes, under BL104, a LegCo member when assuming office must take the LegCo Oath as prescribed under the ODO (being the laws of the Hong Kong Special Administrative Region). He shall take it solemnly and sincerely and in compliance with the LegCo Oath both in substance and in form. If he intentionally declines or fails to so take the LegCo Oath, whether in form or in substance, the oath taken is invalid and he shall be disqualified from assuming the office.” (Paragraph 21 and 22)

With the court opt to follow the “interpretation” of the HKBL this time, it may result in a possibility of making the Sino-British Joint Declaration (“SBJD”) no longer valid.

Both the United Kingdom (“UK”) and the PRC were currently parties to the “Vienna Convention on the Law of Treaties” (“Convention”). When SBJD were signed in 1984, the UK had ratified the convention; and the convention, of course, was working at that time. The SBJD is registered at the United Nations by both parties in the following year. I, YAU Wai-Ching, hence, believe the SBJD is binding on the Convention.

In accordance with Article 60 of the Convention:

“Termination or suspension of the operation of a treaty

as a consequence of its breach

1. A material breach of a bilateral treaty by one of the parties entitles the other to invoke the

breach as a ground for terminating the treaty or suspending its operation in whole or in part.

2. A material breach of a multilateral treaty by one of the parties entitles:

(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in



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part or to terminate it either:

(i) in the relations between themselves and the defaulting State; or

(ii) as between all the parties;

(b) a party specially affected by the breach to invoke it as a ground for suspending the operation of

the treaty in whole or in part in the relations between itself and the defaulting State;

(c) any party other than the defaulting State to invoke the breach as a ground for suspending the

operation of the treaty in whole or in part with respect to itself if the treaty is of such a character that a

material breach of its provisions by one party radically changes the position of every party with respect

to the further performance of its obligations under the treaty.

3. A material breach of a treaty, for the purposes of this article, consists in:

(a) a repudiation of the treaty not sanctioned by the present Convention; or

(b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty.

4. The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the

event of a breach.

5. Paragraphs 1 to 3 do not apply to provisions relating to the protection of the human person

contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of

reprisals against persons protected by such treaties.”

Annex I of the SBJD declared that:

“The Hong Kong Special Administrative Region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central

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People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication.”

The interpretation of HKBL by NPCSC is in fact aiming for the removal of office of member of the Legislative Council(LegCo) Sixtus “Baggio” Leung Chung-Hang and Yau Wai-Ching. It, obviously, is a breach of the SBJD. Analysing this issue with the approach of Article 60 of the Convention, the violation is not essential to the accomplishment of the object or purpose of the SBJD. A relief may, hence, be seek.

With the limit of Article 65 of the Convention, only a party of a treaty are eligible to raise objection on it and seek a solution from the United Nations, I, therefore, could only raise my concern to the UK, a party of the SBJD. If the PRC refuse to settle the dispute, the UK might apply to the International Court of Justice for a decision on it, with Article 66 of the Convention. The decision is likely to be recovering the status of Hong Kong of 30. June, 1997.

Once the SBJD is no longer valid, the Hong Kong Act 1985 in relating to the arrangement of the end of sovereignty of Hong Kong may also subsequently be invalid. Hong Kong Island and Kowloon Peninsula (South of Boundary Street) is then retained as land of her majesty under the Treaty of Nanking, and the Convention of Peking; the sovereignty New Territories will hence hand back to the Republic of China (RoC), with the ruling of the UK, under the Convention for the Extension of the Hong Kong Territory.

With the violation of SBJD of PRC, the UK, as a party of the treaty, ought to response onto it as an obligation. I, therefore, wish the UK will recover the status of Hong Kong by 30. June, 1997. A discussion for the future of Hong Kong is a common wish of Hong Kong People. For Hong Kong Island and Kowloon Peninsula (South of Boundary Street), it future should be discussed by the UK and Hong Kong People; while the negotiation for New territory is between the UK and the RoC, a successor of the Qing Dynasty as the document of abdication of Puyi is kept in Taipei, with respect to the will of Hong Kong People.

May I request if the Secretary of State for Foreign and Commonwealth Affairs could start all relates to the breach of SBJD and reply by written in 30 days.

Yours Faithfully,

Yau Wai-Ching

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