



立法會
LEGISLATIVE COUNCIL

電郵急件

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胡志偉議員

胡議員：

2020年6月3日的立法會會議 擬提出有關“港區國安法”的口頭質詢

你於2020年5月25日，根據《議事規則》第24(2)條作出預告，要求立法會主席批准你在上述立法會會議，就建立健全香港特別行政區（“香港特區”）維護國家安全的法律制度和執行機制制定相關法律（“港區國安法”）的事宜，提出一項口頭質詢（**附錄1**）。政務司司長於今天致函主席，認為該項質詢所涉事宜不屬於香港特區的自治範圍，亦違反了《議事規則》第22(1)條¹及25(1)(h)條²的規定。司長請主席考慮裁定該項質詢不合乎規程（**附錄2**）。按主席指示，我較早前已將司長的函件送交你參閱。在此，我代表主席回覆你如下。

全國人民代表大會（“全國人大”）於2020年5月28日通過《關於建立健全香港特別行政區維護國家安全的法律制度和執行機制的決定》，授權全國人大常務委員會（“人大常委會”）制定適用於香港特區的維護國家安全法律，並在該法律制定後，將之列入《基本法》附件三，由香港特區在當地公布實施。根據《基本法》第十八條，人大常委會在徵詢其所屬的香港特區基本法委員會和香港特區政府的意見後，

¹ 《議事規則》第22(1)條訂明，任何議員均可就政府的工作向政府提出質詢，要求提供有關該事的資料，或要求政府就該事採取行動。

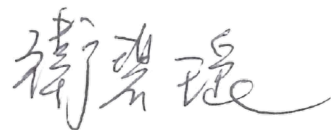
² 《議事規則》第25(1)(h)條訂明，質詢不得為求取見解、解決抽象法律問題或解答假設論題而提出質詢。

可對列於《基本法》附件三的法律作出增減，任何列入附件三的法律，限於有關國防、外交和其他按《基本法》規定不屬於香港特區自治範圍的法律。

請你注意，人大常委會正在制定的港區國安法，是根據《憲法》及《基本法》在國家層面進行的立法工作，關乎國家安全事宜。主席認為，有關法律屬《基本法》第十八條所指有關國防、外交和其他按《基本法》規定不屬於香港特區自治範圍的法律，**屬於中央負責的事務**，而不屬於香港特區政府根據《基本法》自行管理的事務。

主席明白到，港區國安法在香港特區備受各界關注。然而，考慮到港區國安法的立法工作**不屬於香港特區的工作**，而該法律仍在草擬中，**具體內容尚未公布**，主席認為就現階段而言，你擬提出的口頭質詢所涉的事宜，並不屬於《議事規則》第22(1)條所指政府(即“香港特區政府”)的工作。因此，主席**不批准**你在上述立法會會議提出該項質詢。

立法會秘書



(衛碧瑤代行)

2020年6月1日

連附件

副本送：立法會所有其他議員

第3項質詢
(口頭答覆)

港區國安法

胡志偉議員問：

全國人民代表大會於上月底決定，授權其常務委員會，就建立健全香港特別行政區(下稱“香港特區”)維護國家安全的法律制度和執行機制制定相關法律(下稱“港區國安法”)，以及中央人民政府維護國家安全的有關機關會根據需要在香港特區設立機構，依法履行維護國家安全相關職責。港區國安法制定後將列入《基本法》附件三，由香港特區在當地公布實施。就此，政府可否告知本會：

- (一) 有何措施確保港區國安法的實施，不會削弱香港居民在《基本法》第三章下，享有的各種自由和權利(包括言論、新聞、出版、結社、遊行、示威、通訊和創作等自由；人身自由不受侵犯、居民不受任意或非法逮捕，以及居民的住宅和其他房屋不受任意或非法搜查或侵入等權利)；
- (二) 被控違反港區國安法的人士將會在香港特區還是內地受審；及
- (三) 鑒於《中華人民共和國刑法》第八十八條訂明，“在人民檢察院、公安機關、國家安全機關立案偵查或者在人民法院受理案件以後，逃避偵查或者審判的，不受追訴期限的限制”，已立案偵查的港區國安法案件會否受追訴期限的限制；若然，詳情為何？



1 June 2020

附錄2
Appendix 2

(只備英文本
English version only)

The Hon Andrew Leung Kwan-yuen, GBS, JP
President
Legislative Council
1 Legislative Council Road
Central
Hong Kong

Dear President,

Proposed Oral Question No. 3 for the LegCo Sitting on 3 June 2020

We understand that a Member has proposed to raise, at the Council meeting of 3 June 2020, an oral question related to the National People's Congress ("NPC")'s decision on establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special Administrative Region ("HKSAR") to safeguard national security ("NPC Decision"). I write to invite your consideration to rule the question out of order.

NPC's Decision, passed on 28 May 2020, demonstrates the commitment of the Central Authorities to fully and accurately implement "One Country, Two Systems" as well as their care for Hong Kong people. The objective of a National Security Law ("NSL") to be enacted by the Standing Committee of the NPC ("NPCSC") and applied to the HKSAR is to prevent, curb and sanction secession, the subversion of state power, the organisation and carrying out of terrorist activities that seriously endanger national security, and interference by foreign and external forces in the affairs of the HKSAR.

National security is outside the limits of the autonomy of the HKSAR but a matter under the purview of the Central Authorities. Taking into account the current situation in Hong Kong and the difficulty faced by the HKSAR to complete our own legislation for safeguarding national security in the foreseeable future, the Central Authorities have the right and duty to introduce a national law to safeguard national security from the state level in accordance with the Constitution of the People's Republic of China and the Basic Law. This is an exercise of the authority and duty of the Central Authorities. Such national law is under the ambit of "defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region" as set out in Article 18(3) of the Basic Law.

While we appreciate that there are concerns over the NSL to be enacted, we consider it inappropriate for anyone to make unwarranted speculations on its content at this stage, given that the details of the same to be enacted by the NPCSC and to be listed under Annex III of the Basic Law for application in the HKSAR by promulgation are not yet made public. It is hence premature at this juncture for the Government to offer views in response to the question.

In particular, Rule 25(2) of the Rules of Procedure of the Legislative Council ("RoP") stipulates that if the President is of the opinion that a question which a Member seeks to ask infringes any of the provisions of Rule 22 (Nature of Questions) or Rule 25 (Contents of Question), he may direct, inter alia, *"(c) that the Member concerned be informed that the question is out of order"*.

Rule 22(1)

Rule 22(1) of the RoP provides that any Member may address a question to the Government on the work of the Government, and either seeking information on such matter or asking for official action with regard to it. As the details of the future NSL to be enacted are subject to the manner in which the NPCSC will exercise its law-making power, the question clearly does not fall into the descriptions specified in Rule 22(1), and the President may wish to consider ruling the question out of order as contravening Rule 22(1).

Rule 25(1)(h)

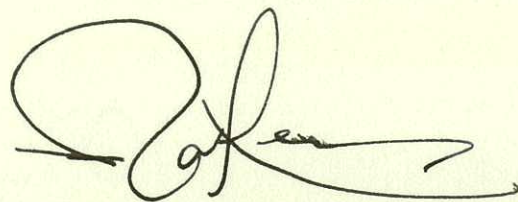
Rule 25(1)(h) of the RoP provides, “*(h) A question shall not be asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal question, or the answer to a hypothetical proposition.*”

The question being asked is premised upon a situation after the implementation of the future NSL to be enacted and applied in the HKSAR. As mentioned above, there is, as yet, no NSL having been enacted by the NPCSC.

Therefore, the question is clearly asked for the purpose of obtaining an expression of opinion, the solution of an abstract legal question, or the answer to a hypothetical proposition for the purpose of Rule 25(1)(h) respectively. More specifically, no meaningful answer can be given to sub-questions (1) to (3), and they are entirely misconceived. The question should therefore be ruled out of order for contravening Rule 25(1) (h) of the RoP.

The HKSAR Government would, however, continue to provide such explanation as may from time to time be necessary. We also appeal to members of the public for their full understanding and staunch support for NPC’s Decision.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a series of connected strokes that end in a horizontal line.

(Matthew Cheung Kin-chung)
Chief Secretary for Administration