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**Explanation on the “Draft Decision of the National People’s
Congress on Establishing and Improving the Legal System and
Enforcement Mechanisms for the Hong Kong Special
Administrative Region to Safeguard National Security”**

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**Explanation on “The Draft Decision of the National People’s
Congress on Establishing and Improving the Legal System and
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— **Addressing the Third Session of the Thirteenth National
People’s Congress on 22 May 2020**

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Fellow Deputies,

I have been entrusted by the National People’s Congress (“NPC”) Standing Committee to explain the Draft Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security (“the Draft Decision”).

I. Necessity and importance of establishing and improving the legal system and enforcement mechanisms for the Hong Kong Special

Administrative Region (“HKSAR”) to safeguard national security at national level

Since the return of Hong Kong to the motherland, China has been firmly implementing the principles of “One Country, Two Systems”, “Hong Kong people administering Hong Kong”, and a high degree of autonomy. The practice of “One Country, Two Systems” has achieved unprecedented success in Hong Kong. Meanwhile, the process of this practice has met new situations and new problems while also facing new risks and challenges. At present, the increasingly notable national security risks in the HKSAR have become a prominent problem. In particular, since the onset of Hong Kong’s “legislative amendment turmoil” in 2019, anti-China forces seeking to disrupt Hong Kong have blatantly advocated such notions as “Hong Kong independence”, “self-determination” and “referendum”, and engaged in activities to undermine national unity and split the country. They have brazenly desecrated and defiled the national flag and emblem, incited Hong Kong people to oppose China and the Communist Party of China (“CPC”), besiege Central People’s Government (“CPG”) offices in Hong Kong, and discriminate and ostracize Mainland personnel in Hong Kong. These forces have also wilfully disrupted social order in Hong Kong, violently resisted police enforcement of the law, damaged public facilities and property, and paralyzed governance by the government and operation of the legislature. Moreover in recent years, certain foreign or external forces have flagrantly interfered in Hong Kong’s affairs. They have

made intervention and created disturbances in various ways, such as by legislative and administrative means and through non-governmental organizations. In collusion with those anti-China Hong Kong disrupters, these forces of the same ilk backed and cheered on the disrupters and provided a protective umbrella, and utilized Hong Kong to carry out activities endangering national security. These acts and activities have seriously challenged the bottom line of the “One Country, Two Systems” principle, seriously undermined the rule of law, and seriously jeopardized national sovereignty, security and development interests. Vigorous measures must be taken to prevent, suppress and punish such acts and activities in accordance with the law.

Article 23 of the Basic Law of the HKSAR stipulates that “[the HKSAR] shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the [CPG], or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the [HKSAR], and to prohibit political organizations or bodies of the [HKSAR] from establishing ties with foreign political organizations or bodies.” This stipulation is commonly known as “Article 23 legislation” . It not only manifests the State’s trust in the HKSAR, but also specifies the HKSAR’s constitutional responsibility and legislative obligation to safeguard national security. However, over 20 years after Hong Kong’s return, Article 23 legislation has yet to materialize due to the strong obstruction and interference by the anti-China Hong Kong disrupters and external hostile forces. Moreover,

since 2003's thwarted efforts to implement Article 23, the relevant legislative exercise has been severely smeared and demonized in Hong Kong by those with ulterior motives. As a matter of fact, it has become very difficult for the HKSAR to complete Article 23 legislation. Some provisions in the existing laws of Hong Kong before resumption of exercise of Chinese sovereignty which could otherwise safeguard national security have long lain "dormant". Apart from the legal system, there exist notable deficiencies in areas such as institutional building, capabilities and law enforcement powers of the HKSAR in respect of safeguarding national security. The relevant law enforcement work needs strengthening. The Hong Kong community has to make vigorous efforts to launch national security education and generally foster public awareness of safeguarding national security. Overall speaking, enactment for Article 23, as expressly stipulated by the Hong Kong Basic Law, has the risk of long-term "shelving". The relevant provisions in the existing laws of the HKSAR can hardly be enforced effectively. Its legal system and enforcement mechanisms for safeguarding national security have apparent "shortcomings" of inadequacy, inadaptability and non-compliance, which have caused the exacerbation of various activities endangering national security in the HKSAR. The risks faced in maintaining lasting prosperity and stability in Hong Kong as well as safeguarding national security are not to be ignored.

The Fourth Plenary Session of the 19th CPC Central Committee explicitly proposed to "establish and improve the legal systems and

enforcement mechanisms for special administrative regions to safeguard national security, as well as supporting them in strengthening law enforcement”. It was stated that “there can be no tolerance to any act designed to challenge the bottom line of the ‘One Country, Two Systems’ principle and advocate secession”. To implement the decisions and deployments of the CPC Central Committee and under Hong Kong's current situation, efforts must be made at the national level to establish and improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security, and to change its long-term “defenceless” condition in the field of national security. This will advance the institution building for safeguarding national security on the course of the Constitution and the Hong Kong Basic Law. This will also strengthen the work on safeguarding national security and ensure the steady, enduring growth of the cause of “One Country, Two Systems”.

In accordance with the Constitution and the Hong Kong Basic Law, coupled with the State’s years of practice in institution building and development of special administrative regions, various means are available at the national level to establish and improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security. For example, the NPC and its standing committee can make decisions, enact, amend and interpret laws, and list national laws in Annex III to the Hong Kong Basic Law. The CPG can also issue directives. The Central Authorities and relevant departments of the State undertook earnest study and communication upon consolidated analysis,

evaluation and determination of various factors, before they proposed the adoption of a two-step approach of “Decision + Legislation” to advance the matter. The first step is for the NPC to make a decision on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security in accordance with the Constitution and the Hong Kong Basic Law (“the Decision”), and lay down certain basic provisions on the relevant matters. At the same time, the NPC Standing Committee is entrusted to formulate the relevant law on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security. The second step is for the NPC Standing Committee to formulate the relevant law in accordance with the Constitution, the Hong Kong Basic Law and the mandate of the NPC’s Decision and in light of the specific circumstances of the HKSAR, and decide on including it into Annex III to the Hong Kong Basic Law to be promulgated and implemented by the HKSAR locally.

On 18 May 2020, the 18th Session of the 13th NPC Standing Committee heard and deliberated the Report of the State Council on Safeguarding National Security in the Hong Kong Special Administrative Region. The Session considered it necessary to establish and improve the legal system and enforcement mechanism at the state level for the HKSAR to safeguard national security and concurred with the proposal made in the report by the State Council. Under the relevant provisions of the Constitution and the Hong Kong Basic Law, the Legislative Affairs

Commission of the NPC Standing Committee formulated the Draft Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National. Upon deliberation at its Session, the NPC Standing Committee decided to submit the Draft Decision to the Third Session of the 13th NPC for deliberation.

II. General requirements and basic principles

The general requirements for establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security at the national level in light of the new situations are set out below. We must fully adhere to the guidance of Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era. We must fully implement the spirit of the 19th CPC National Congress and the Second, Third and Fourth Plenary Sessions of the 19th CPC Central Committee. We must thoroughly adopt a comprehensive view of national security. The regime of "One Country, Two Systems" must be upheld and enhanced. We must organically combine the upholding of the Central Authorities' overall jurisdiction over the special administrative regions with the protection of the high-degree autonomy of these regions. Work must be stepped up in institution building and law enforcement for safeguarding national security. We must steadfastly uphold national sovereignty, security and development interests. Long-term prosperity and stability of Hong Kong must be maintained. We must ensure that

the policy of “One Country, Two Systems” remains unchanged and unshaken, and that the practice of “One Country, Two Systems” remains intact and undistorted.

In conformity with the above general requirements, the following basic principles must be observed and well grasped.

The first is resolutely safeguarding national security. Safeguarding national security is the requisite for the State’s enduring governance and lasting peace, and for Hong Kong’s long-term prosperity and stability. It is the common responsibility of all the people of China including the people of Hong Kong, as well as the joint responsibility of the State and the HKSAR. Any activities which endanger national sovereignty and security, challenge the power of the Central Authorities and the authority of the Hong Kong Basic Law, and use Hong Kong to infiltrate and sabotage Mainland China touch on our bottom line and are never allowed.

The second is upholding and enhancing the “One Country, Two Systems” regime. “One Country” is the premise and basis for implementing “two systems”. “Two Systems” is subordinate to, derived from and unified within “One Country”. The principles of “One Country, Two Systems”, “Hong Kong people administering Hong Kong” and a high degree of autonomy must be unswervingly, fully and faithfully implemented. We must accurately chart the correct course for “One Country, Two Systems” and fully unleash its institutional advantage in

order to optimize the HKSAR's implementation of the relevant system and mechanisms under the Constitution and the Hong Kong Basic Law.

The third is the adherence to administering Hong Kong in accordance with the law. The Constitution and the Hong Kong Basic Law together constitute the constitutional basis of the HKSAR. The constitutional order in the HKSAR as established by the Constitution and the Hong Kong Basic Law must be resolutely upheld. The HKSAR must be administered in strict adherence to the Constitution and the Hong Kong Basic Law. The administration in accordance with law by the HKSAR's Chief Executive and the HKSAR Government must be supported. The authority of rule of law must be firmly established and resolutely safeguarded. Any acts which breach the law or undermine the rule of law shall be held liable in accordance with the law.

The fourth is the resolute opposition to external interference. The HKSAR's affairs are China's internal affairs and allow no external meddling. We must resolutely oppose interference in any form in Hong Kong affairs by any foreign country, or its organization or individual. We are determined to prevent and stop interference in Hong Kong affairs and activities of secession, subversion, infiltration and sabotage carried out by any external forces. The State will take all necessary countermeasures against any foreign country's formulation and implementation of any legislative, administrative or other initiatives for interfering in Hong Kong affairs.

The fifth is fully safeguarding the legitimate rights and interests of Hong Kong residents. Safeguarding national security is fundamentally consistent with respecting and protecting human rights. The tiny number of criminal offences which jeopardize national security should be effectively prevented, suppressed and punished in accordance with the law. This aims to better protect the lives, property, fundamental rights and freedoms of the vast majority of Hong Kong residents. Any work and law enforcement to safeguard national security must be conducted in strict compliance with the legal requirements, statutory powers and functions, and statutory procedures. It shall not infringe upon the legitimate rights and interests of any Hong Kong resident, legal person or other organization.

III. Key contents of the Draft Decision

The Draft Decision is divided into two parts: introduction and body. The introduction outlines the reasons, purpose and basis for making the Decision. The NPC's relevant Decision is made pursuant to Articles 31, 62(2), 62(14) and 62(16) of the Constitution and the relevant provisions of the Hong Kong Basic Law. With full consideration of the practical needs for safeguarding national security and the actual circumstances of the HKSAR, it is an institutional arrangement made for establishing and improving the HKSAR's legal system and enforcement mechanisms to safeguard national security. This institutional arrangement is in line with the constitutional requirements and constitutional principles, and consistent with the legislative intent of the

Hong Kong Basic Law and the relevant system established thereunder. It will effectively safeguard national security in the HKSAR, and strongly reinforce and expand the rule-of-law, political and social bases of “One Country, Two Systems”.

The body of the Draft Decision consists of seven articles. Article 1 enunciates the State’s unswerving, full and faithful implementation of the principles of “One Country, Two Systems”, “Hong Kong people administering Hong Kong” and a high degree of autonomy; it emphasizes the taking of necessary measures to establish and improve the legal system and enforcement mechanisms for the HKSAR to safeguard national security, and to prevent, suppress and punish in accordance with the law acts and activities endangering national security. Article 2 clearly states that the country resolutely opposes interference in the HKSAR’s affairs by any foreign or external forces in any form, and will take necessary countermeasures. Article 3 clearly stipulates that it is the HKSAR’s constitutional responsibilities to safeguard national sovereignty, unity and territorial integrity; it emphasizes that the HKSAR must complete the national security legislation stipulated in the Hong Kong Basic Law at an earlier date, and that the HKSAR’s administrative, legislative and judicial organs must, in accordance with relevant laws and regulations, effectively prevent, suppress and punish acts and activities endangering national security. Article 4 clearly provides that the HKSAR must establish and improve the institutions and enforcement mechanisms for safeguarding national security; that when needed,

relevant national security organs of the CPG will set up agencies in the HKSAR to fulfil relevant duties to safeguard national security in accordance with the law. Article 5 expressly stipulates that the Chief Executive of the HKSAR must regularly report to the CPG on the HKSAR's performance of the duties to safeguard national security, carry out national security education, forbid in accordance with the law acts and activities endangering national security, etc. Article 6 specifies the three constitutional meanings of the relevant legislation by the NPC Standing Committee as follows. First, the NPC Standing Committee is entrusted to formulate the relevant law on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security; the NPC Standing Committee will exercise its legislative powers and functions so mandated accordingly. Second, it is clearly stipulated that the NPC Standing Committee has the relevant legal task to effectively prevent, suppress and punish acts and activities of secession, subversion, organization and perpetration of terrorist activities, etc. that seriously endanger national security, as well as activities of foreign or external forces interfering in the affairs of the HKSAR, which occur in the HKSAR. Third, it is made clear the method of implementing the relevant law of the NPC Standing Committee in the HKSAR, namely by the NPC Standing Committee's decision on including the relevant law into Annex III to the Hong Kong Basic Law to be promulgated and implemented by the HKSAR locally. Article 7 specifies the effective time for the Decision, namely, as of the date of

promulgation.

The aforesaid institutional arrangement to be made by the NPC in light of the new situations and needs includes entrusting the NPC Standing Committee to formulate the relevant law on establishing and improving the legal system and enforcement mechanisms for the HKSAR to safeguard national security for further implementation of the relevant provisions under the Constitution and the Hong Kong Basic Law. Under Article 23 of the Hong Kong Basic Law, the HKSAR still has the constitutional responsibility and legislative obligation to complete the relevant legislation for safeguarding national security as soon as possible. Any legislation and its implementation which safeguards national security must not conflict with the Decision.

After the adoption of the Decision, the NPC Standing Committee will work with relevant parties on the early formulation of the relevant law for the HKSAR to safeguard national security, actively push for settling the HKSAR's prominent problems in its national security system, strengthen the establishment of specialized institutions, enforcement mechanisms and law enforcement powers, so as to ensure the relevant law's effective implementation in the HKSAR.

The Draft Decision of the National People's Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for the Hong Kong Special Administrative Region to Safeguard National Security and the above explanation are presented for

your deliberation.