

**Hong Kong Bar Association’s Statement on  
Reference Made by the Hon. Dennis Kwok to its “Views on Legislation  
under Article 23 of the Basic Law” (22 July 2002)**

1. The Hong Kong Bar Association (“HKBA”) notes that the Honourable Mr. Dennis Kwok, Member of the Legislative Council, made reference to a statement of the HKBA in 2002 in his question to the Secretary for Justice on 9 December 2015 to suggest that it was “inappropriate” for the HKSAR Government to “borrow or adopt” national laws. The question was asked in the context of the HKSAR Government’s hinted “co-location/juxtaposition/preclearance” of immigration, customs and quarantine (“ICQ”) checkpoint facilities at the West Kowloon terminus of the Guangzhou-Shenzhen-Hong Kong Express Rail Link (“the Proposed Co-location Arrangement”). The HKBA wishes to make clarification in respect of the way in which the view of the HKBA was quoted.

2. The sentence referred to by Mr Kwok came from a paragraph of the “Hong Kong Bar Association’s Views on Legislation under Article 23 of the Basic Law” dated 22 July 2002 (“2002 Statement”), which is now quoted in full with its context included:

“4. Article 23 of the Basic Law emphasizes that the HKSAR **shall enact laws on its own**. Furthermore, there is a restriction on applying national laws under Article 18 of the Basic Law. If any national law is to be applied in the HKSAR, it has to be included in Annex III of the Basic Law by the Standing Committee of the National People's Congress after consulting the Committee on the Basic Law and the HKSAR Government. Borrowing or adopting Mainland Laws by the HKSAR Government is therefore inappropriate.”

5. Accordingly, the Bar is of the view that the Basic Law does not require the HKSAR Government to enact Article 23 legislation in terms identical to the relevant provisions of the Criminal Law of the PRC.”

**What was pointed out as being "inappropriate" in the 2002 Statement was to adopt the identical terms of the Criminal Law of the PRC as the Hong Kong legislation to be enacted under Article 23 of the Basic Law. The sentence quoted by Mr. Kwok therefore was NOT directed towards the appropriateness or otherwise of applying national law through Annex III of the Basic Law in general.**

3. The HKBA considers it essential that the sentence be read in the proper context of the paragraph and the document to which it belongs, concerning the specific question of legislation under Article 23 of the Basic Law.

**4. The HKBA is actively monitoring developments in respect of the Proposed Co-location Arrangement and is also studying the constitutional and legal issues arising out of such a suggestion. The HKBA will publish its views on the matter when and where appropriate.**

Dated: 11 December 2015.

HONG KONG BAR ASSOCIATION