

January 5, 2023

The Editor
The Wall Street Journal

Dear Editor,

Your editorial “Beijing says Hong Kong can deny foreign lawyers for the first time” (January 2) is factually incorrect and misleading.

Your unfounded allegation that capable lawyers living and practising in Hong Kong are more “vulnerable to pressure” than foreign lawyers is insulting. Many counsel including senior counsel of the highest standing in Hong Kong have acted for the defence in national security cases without fear or any problems.

To set the record straight, under the existing common law system of Hong Kong, no person is entitled to instruct overseas counsel as of right, irrespective of the nature of a case. Overseas counsel have to apply to the court for ad hoc admission, which will only be granted on stringent conditions based on public interest considerations, and meet other statutory requirements so as to practise in Hong Kong for the purposes of a particular case.

The interpretation was made by the Standing Committee of the National People’s Congress with solid legal basis in accordance with the Constitution of the People’s Republic of China and the Hong Kong National Security Law. It sets out general principles and does not target at any individual case. The interpretation has clarified that Hong Kong may resolve the issue in accordance with the existing mechanism under the Hong Kong National Security Law, which mechanism is consistent with the common law principle of judicial deference to the executive authority on national security matters.

The Chief Executive has a constitutional duty to safeguard national security and has to act in accordance with the law. He is only a part of the Committee for Safeguarding National Security which comprises many members. The functions and duties of the Committee are clearly delineated under Article 14 of the Hong Kong National Security Law which do not involve any judicial power or function. Besides, under Article 47 of the Hong Kong National Security Law, the Chief Executive will certify whether an act concerns national security or whether the evidence involves state secrets only when such questions arise in proceedings, and the certificate shall be binding on the courts in relation to such questions only. The Chief Executive does not decide the outcome of the case. The final adjudication power of a case still rests with the Court.

The interpretation adheres to the rule of law, and does not impinge on the courts’ independent judicial power or fundamental human rights including the right to a fair trial.

Yours faithfully,

Chan Kwok-ki
Chief Secretary for Administration
The Government of the Hong Kong Special Administrative Region