
| RESEARCH ARTICLE

Conflict in Interpretation? The Definition and Application of Article 22 of the Basic Law of the Hong Kong Special Administrative Region

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| ABSTRACT

In April 2020, a debate broke out over whether the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region (LOCPG HK) and the Hong Kong and Macau Affairs Office of the State Council (HKMAO) have the authority to comment on Hong Kong's Legislative Council affairs under Article 22 of the Basic Law of the Hong Kong SAR. In response to this debate and to review the divergent interpretations of Article 22 of the Basic Law by China mainland and Hong Kong commentators, this research examines the legislative history, original intention of Article 22, and its relationship with relevant Chinese law and policies. It argues that the LOCPG HK and the HKMAO are not subject to Article 22 of the Basic Law. Furthermore, these agencies' involvement in Hong Kong issues should be regarded as exercising their lawful authority to supervise Hong Kong's internal affairs rather than as "interference". It advocates that to reduce the conflict in interpretation between Mainland and Hong Kong legal communities, textual analysis, systematic content analysis, and the Chinese legal system should be the bases of future interpretation and application of the Hong Kong Basic Law.

| KEYWORDS

Article 22 of the Hong Kong Basic Law, Liaison office of the Central People's Government in the Hong Kong SAR, the Hong Kong and Macau Affairs Office of the State Council

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1. Introduction

In April 2020, the HKMAO and the LOCPG HK unprecedentedly condemned the pan-democrats for "maliciously" obstructing the election to the Legislative Council House Committee Chair.¹ This move received criticisms from Hong Kong media and was described by some as interfering in Hong Kong's internal affairs and violating Article 22 of the Basic Law of the Hong Kong SAR of the People's Republic of China (hereafter the Basic Law).² Soon afterward, the

¹ Natalie Wong, Gary Cheung, and Sum Lok-kei, "Beijing's liaison office says it has right to handle Hong Kong affairs, as provided by the constitution and Basic Law", <https://www.scmp.com/news/hong-kong/politics/article/3080506/beijings-liaison-office-says-it-has-right-handle-hong-kong>, published April 17, 2020, accessed August 25, 2020.

² Article 22 (1) (2) (3) of the Basic Law provides that:

"No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs which the Hong Kong SAR administers on its own in accordance with this Law. If there is a need for departments of the Central Government or for provinces, autonomous regions, or municipalities directly under the Central

spokesmen of the above "Two Offices" held two press conferences on 17 and 21 April 2020, respectively, to refute criticisms of "interfering" in Hong Kong affairs and confirm their authority to "supervise major affairs in Hong Kong".³

Against the background of a controversial understanding of the Article 22 of the Basic Law between the China Mainland and the Hong Kong media, this research analyses the definition and application of relevant clauses in the Basic Law and clarifies whether the actions of the "Two Offices" constitute "interference" or "supervision" to the Hong Kong SAR's local affairs. It argues that the LOCPG HK and the HKMAO are not departments of the Central People's Government, hence not subject to Article 22 of the Basic Law. Furthermore, these agencies' involvement in the Hong Kong Legislative Council's affairs should be regarded as exercising their lawful authority to supervise Hong Kong affairs rather than as "interference". Meanwhile, though Article 22 (3) is not applicable to the LOCPG HK, the office should still abide by the local laws of the Hong Kong SAR.

Article 22 is arranged in Basic Law Chapter II, "Relationship Between the Central authorities and the Hong Kong Special Administrative Region", which provides the legal concepts of the Central Government departments. To understand the original meaning of Article 22, it is necessary to comprehensively study the purpose of the Basic Law as stated in the Preamble, the principles and regulations defined in Chapter I, "General Principles", other related articles on the relationship between the central authorities and the Hong Kong SAR stated in Chapter II and other chapters or articles, as well as the combination with relative mainland legal concepts.

According to Article 22 (1), the Central People's Government is not one of the legal subjects, such as the departments of the State Council and other local governments that may not interfere in the Hong Kong SAR affairs.⁴ Based on the People's Republic of China Constitution (PRC Constitution) and the Basic Law, the Central People's Government directly administers the Hong Kong SAR. It, therefore, has the authority and responsibility to rule on Hong Kong affairs. This interpretation is also an outcome of China resuming its exercise of sovereignty over Hong Kong in 1997. Therefore, the central government's administration over Hong Kong SAR should not be considered as "interference".⁵

The intentions of Articles 22 (2) and (3) are to restrict relevant mainland authorities or local governments from setting up offices in the SAR.⁶ These entities are not allowed to set up offices freely in Hong Kong SAR unless they satisfy the following three conditions: (1) the offices are necessary; (2) consent from the SAR government is received; (3) approved by the Central People's Government.⁷ Among them, the second condition is the key to determining whether Article 22 (2) of the Basic Law is applicable to relevant authorities, and according to the above procedures, all the organs and personnel in the Hong Kong SAR set up by the departments of the Central People's Government, all provinces, autonomous regions, and municipalities should abide by the laws of Hong Kong SAR. Due to space limitations and relevance to the research topic, this article is not going to go into the details of Article 22 (4), which regulates that visitors from other areas of China should go through necessary approval procedures before entering the Hong Kong SAR.

In the following paragraphs, this research firstly analyses the history of the LOCPG HK, the drafting process of Article 22 (1), and the State Council structure. It contents that the LOCPG HK and the HKMAO are not departments of the Central People's Government and therefore not subject to Article 22 (1) of the Basic Law. It then goes on to study the definition of "interference" in Article 22 (1) and argues that the Central People's Government and the LOCPG HK's involvement in HK affairs is "supervision" rather than "interference", which opposes the criticisms from several HK media regarding the LOCPG HK spokesman's speeches in April 2020. In the third section, this research looks into the transition of the Xinhua News Agency to the LOCPG HK, as well as relative legislation and policies in the mainland and in the HK SAR. It contents that Article 22 (2) is not the legal basis for the

Government to set up offices in the Hong Kong SAR, they must obtain the consent of the government of the Region and the approval of the Central People's Government. All offices set up in the Hong Kong Special Administrative Region by departments of the Central Government, or by provinces, autonomous regions, or municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Region."

Apple Daily, "The Liaison office 'interprets' the Article 22 and condemned the pan-democratic twice in a week to 'pay for the prices'" (in Chinese) (苹果日报, 中联办就22条"释法"一星期两轰民主派"要埋单"), <https://hk.appledaily.com/local/20200417/5SX31X67ZKAHVVDVAGMRBHFDBBM/>, published April 17, 2020, accessed August 25, 2020.

³ Xinhua News, "Central gov't agency, liaison office have the power to supervise major affairs in HK: spokesperson of liaison office", http://www.xinhuanet.com/english/2020-04/17/c_138986091.htm, published April 17, 2020, accessed August 25, 2020.

⁴ No department of the Central People's Government and no province, autonomous region, or municipality directly under the Central Government may interfere in the affairs that the Hong Kong Special Administrative Region administers on its own in accordance with this Law.

⁵ Thomas Hobbes, *Leviathan* in Michael L. Morgan, ed., *Classics of Modern and Political Theory* (Cambridge; Hackett Publish Co., 1992) 624-641.

⁶ See footnote 2 above.

⁷ Ibid.

establishment of the LOCPG HK, and its establishment does not require the consent of the Hong Kong SAR government. Lastly, this research analyses Article 22 (3) of the Basic Law and concludes that the LOCPG HK and the HKMAO should all abide by the laws of the Hong Kong SAR.

2. Article 22 (1): Applicable to the LOCPG HK and the HKMAO?

Following the LOCPG HK spokesman's criticisms against the pro-democratic members of the HK legislative council in April 2020, the role and authority of the LOCPG HK in Hong Kong were under fierce debate. Some argued that the Office should be considered as a department of the Central Government, therefore subject to Article 22, and may not "interfere" in the affairs that the Hong Kong SAR administers on its own.⁸ The spokesman of the HKMAO rebutted the above criticism based on the "particularity of the LOCPG HK".⁹

The LOCPG HK, although its establishment and legal status are not expressly stipulated in the Basic Law ... is the agency of the central government and handles Hong Kong affairs on behalf of the central government. Whether it was originally the Xinhua News Agency Hong Kong Branch or renamed as the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region, the LOCPG HK has the authority and responsibility to supervise issues relating to the relationship between the Central Government and the SAR. It may also supervise the proper implementation of the 'one country, two systems' principle and the Basic Law, the normal operation of local political systems, the overall interests of society, and other major issues.¹⁰

The Liaison office spokesman points out three elements that are critical in identifying whether the Liaison Office is subject to Article 22, namely the agency history, agency nature and status, functions, and responsibilities of the LOCPG HK.

In practice, the LOCPG HK has been mistaken as a department of the central government that falls under the scope of Article 22 (1) of the Basic Law. In a file submitted to the Legislative Council in 2007, the Constitutional and Mainland Affairs Bureau of the HK SAR government described the Liaison Office in Hong Kong as an organ set up by the Central Government in Hong Kong under Article 22 of the Basic Law.¹¹ This wrong understanding has led to the Hong Kong government's three revisions of its press release regarding the Liaison Office's status in Hong Kong on 18 April 2020, which triggered the international debate over the LOCPG HK's legal status.

This article contends that the LOCPG HK is an agency of the Central People's Government that operates on behalf of its principle in the Hong Kong SAR rather than a legally independent department. Supporting evidence is drawn from the history of the Office, the Basic Law drafting process, and the State Council structure regulated in national laws and policies. Likewise, the HKMAO is also not subject to Article 22 (1) of the Basic Law and should be considered as an administrative office of the State Council that handles Hong Kong and Macau affairs.

2.1 Historical development of the LOCPG HK

The predecessor of the LOCPG HK is the Xinhua News Agency Hong Kong Branch, founded in May 1947, which predates the drafting of the Basic Law.¹² Hong Kong, though being a Chinese territory, was occupied by Britain before the handover. Hence, it was impossible for the PRC to set up a diplomatic institute in it. According to Jiang En'zhu, the British government tacitly approved the Xinhua News Agency Hong Kong Branch as a representative office of the Central Government of China prior to 1997.¹³ Therefore, the Xinhua News Agency Hong Kong Branch was set up as a representative office of the PRC government to address issues between China and Britain.¹⁴

⁸ Dengxin Li, "The LOCPG HK overrides the Basic Law? Pro-democrats: worse than the law interpretation", *Deutsche Welle*, <https://p.dw.com/p/3b9m7>, published 20 April 2020, accessed 8 September 2020.

⁹ Lifang Qiu, "LOCPG HK: the so-called "central government intervenes in Hong Kong's internal affairs" is a deliberate misinterpretation of the basic law", Xinhua News, http://www.xinhuanet.com/2020-04/17/c_1125872378.htm, published on 17 April 2020, accessed 7 September 2020 (in Chinese) (邱丽芳, "香港中联办: 所谓"中央干预香港内部事务"是对基本法的故意曲解")

¹⁰ Ibid.

¹¹ Hong Kong Legislative Council Paper No. CB (2) 898/06-07 (02) .

¹² The Liaison Office of the Central People's Government in the Hong Kong SAR, "Brief introduction of the Liaison Office" (in Chinese) (中联办, 中联办简介), http://www.locpg.gov.cn/zjzlb/2014-01/04/c_125957081.htm, published January 4, 2014, accessed 25 August 2020.

¹³ En'zhu Jiang, *Great Power Rivalry: China-EU relations and witness of the return of Hong Kong* (Hong Kong: Hong Kong Open Page Publishing Company Limited, 2016) p 285 (姜恩柱, 《大国较量: 中欧关系与香港回归亲历》, 香港中和出版有限公司2016年7月, 第285页).

¹⁴ Brian C. H. Fong, "The Partnership between the Chinese Government and Hong Kong's Capitalist Class: Implications for HKSAR Governance, 1997-2012" (2014) 217 *China Quarterly* 195-220. Regina Ip, "Why Beijing's offices in Hong Kong cannot be guilty of interference, despite the legal community's misgivings", <https://www.scmp.com/comment/opinion/article/3083440/why-beijings-offices-hong-kong-cannot-be-guilty-interference>, published May 10, 2020, accessed 25 August 2020.

Before 1997, the Xinhua News Agency Hong Kong Branch operated as both a news agency and an official authority, directly communicating with the British Hong Kong Government and passing on information on behalf of the Central People's Government.¹⁵ In 1978, British Hong Kong Governor Sir Murray MacLehose attended the Chinese National Day reception held by the Xinhua News Agency Hong Kong Branch for the first time, which then became a tradition for British Hong Kong Governors until China resumed its sovereignty over Hong Kong.¹⁶

In September 1997, the Central People's Government sent a formal notice to the Hong Kong SAR government stating that the Xinhua News Agency Hong Kong Branch is a centrally authorized institute that predates the establishment of the SAR.¹⁷ In March 1998, the Central People's Government sent another notice that specified the Xinhua News Agency Hong Kong Branch's legal status as the Central People's Government's authorized agency in the Hong Kong SAR.¹⁸ In June 1999, a file from the Constitutional and Mainland Affairs Bureau of Hong Kong submitted to the Legislative Council stated that

Before the handover of Hong Kong, the Xinhua News Agency Hong Kong Branch had been a dispatched agency of the Central People's Government that exercised relevant functions in Hong Kong, and after the handover, it continued to be an administrative office authorized by the Central People's Government, and its establishment did not require the consent of the SAR Government.¹⁹

After the handover, the Interpretation and General Clauses Ordinance of Hong Kong were revised to ensure that the local laws could conform to the Basic Law and the constitutional status of the Hong Kong SAR. Meanwhile, the Hong Kong Provisional Legislative Council amended a series of local laws through the Adaptation of Laws (Interpretative Provisions) Bill, including the interpretation of the legal status of the Xinhua News Agency Hong Kong Branch as the Central People's Government's authorized agency in Hong Kong SAR.²⁰

On 15 January 2000, the State Council issued the State Council Letter [2000] No. 5, "Notice of Renaming the Xinhua News Agency Hong Kong Branch and Macau Branch of the State Council", announcing that the Xinhua News Agency Hong Kong Branch was renamed as the Liaison Office of the Central People's Government in the Hong Kong SAR. The Letter also assigned detailed responsibilities to the Liaison Offices in Hong Kong.²¹

The Xinhua News Agency functioned as the Central People's Government's representative agency in Hong Kong from 1947 to 2000. According to the State Council Letter [2000] No. 5, the renaming of the Xinhua News Agency to the LOCPG HK had no substantial impact on the news agency's relationship with the Central People's Government. Therefore, according to the historical background of the LOCPG HK, it should be considered as a representative agency of the Central People's Government.

2.2 *The LOCPG HK's legal status in the State Council*

In China's legal context, the Central People's Government refers to the State Council, the highest state executive authority. Article 6 (1) of the 1996 Regulations on the Establishment and Staffing of the Administrative Authorities of the State Council stipulates that the State Council "composes of the State Council General Office, departments of the State Council, organizations directly

¹⁵ Xiaozhuang Song, "On the relationship between the central government and the Hong Kong Special Administrative Region under "one country, two systems" (Beijing: China Renmin University Press, 2003) (宋小庄, 《论“一国两制”下中央和香港特区的关系》, 中国人民大学出版社, 2003年5月).

¹⁶ Enzhu Jiang and Ding Jia, "The origin and development of Hong Kong Branch of Xinhua News Agency" (2017) 3 *General Review of the Communist Party of China*, 28-29 (in Chinese) (姜恩柱, 鼎甲, "新华社香港分社的由来和发展", 《党史博览》, 2017年第3期, 第28-29页).

¹⁷ Jiang, 2016, p. 285.

¹⁸ Ibid.

¹⁹ See HK Legislative Council Paper No. CB (2) 2254/98-99 (02) .

²⁰ Ibid.

²¹ See the State Council Letter [2000] No. 5, "The Notification of the State Council on renaming Xinhua News Agency Hong Kong Branch and Macau Branch" (issued by the State Council on 15 January 2020) (国务院关于更改新华通讯社香港分社、澳门分社名称问题的通知), which provides that:

"On 28 December 1999, after the Central People's Government had resumed the exercise of sovereignty over Hong Kong and Macao, the State Council has made the following decisions at the 24th Executive Meeting of the State Council: renaming the Xinhua News Agency Hong Kong Branch and the Xinhua News Agency Macau Branch to the Liaison Office of the Central People's Government in the Hong Kong Special Administrative Region and the Liaison Office of the Central People's Government in the Macao SAR respectively since 18 January 2000."

under the State Council, administrative offices under the State Council, consultative and coordinating institutes of the State Council and national administrative agencies supervised by the departments of the State Council.”²²

According to the duties of the HKMAO and the LOCPG HK, they are not the “departments directly under the Central Government”. Article 6 (1) of the above 1996 Regulation stipulates that “departments of the Central People’s Government” refer to the “composing departments of the State Council” that perform “basic administrative functions of the State Council” and the “departments directly under the State Council” which exercise “independent administrative functions”²³. The HKMAO is responsible for implementing the principle of ‘one country, two systems’ and the Central Government’s policies on Hong Kong and enforcing the Basic Law of Hong Kong, which clearly exceeds the realm of “basic administrative functions” and cannot be characterized as the duties of the “departments of the Central People’s Government”.²⁴ Likewise, the LOCPG HK’s duty to “undertake other assignments designated by the State Council or the Central People’s Government” does not fall into the category of “departments directly under the Central People’s Government” either.²⁵

Moreover, during the drafting of the Basic Law, a consultation report issued in October 1988 advocated changing the subjects of Article 22 (1) from “departments of the Central People’s Government, all provinces, autonomous regions, or municipalities” to “the Central People’s Government and the departments directly under the Central People’s Government, all provinces, autonomous regions, or municipalities”.²⁶ But this suggestion was not adopted by the enacted Basic Law. As recalled by Professor Wang Shuwen, several members of the Drafting Committee advocated that “the Central People’s Government shall not interfere in the affairs which the Hong Kong Special Administrative Region administers on its own in accordance with this Law.”²⁷ This suggestion was opposed by most of the committee members, as Wang expressed that this rule would cause confusion and was therefore not acceptable.²⁸ Thus, “the departments directly under the Central Government as well as all provinces, autonomous regions, or municipalities” do not include the Central People’s Government.

2.3 The legal status of the HKMAO

From the State Council structure perspective, the HKMAO and the LOCPG HK should be considered as “administrative offices of the State Council” that “assist the Premier of the State Council in handling special matters”.²⁹ The Central People’s Government set up the HKMAO to specifically handle Hong Kong and Macau affairs and set up the LOCPG HK as a resident organ of the Central People’s Government in Hong Kong. Both institutions were set up to address special State Council matters. Furthermore, the LOCPG HK does not operate as an independent administrative organ, which makes it fall under “Administrative Offices of the State Council” regulated in Article 6 (5) of the 1997 Regulations on the Establishment and Staffing of the Administrative Authorities.³⁰

Another piece of evidence supporting the previous claim is the 2018 State Council Notice on its Organizational Structure that clarified the 26 departments of the State Council, such as the Ministry of Public Security, the Ministry of Education, the Commission of Development and Reform, and 10 directly administered agencies.³¹ However, the LOCPG HK and the HKMAO were not on the list, which suggests that they are not departments of the Central People’s Government, therefore not abide by Article 22 of the Basic Law. Both the LOCPG HK and the HKMAO represent the Central Government in handling Hong Kong-related affairs. They exercise functions according to relevant law and the Constitution.

Through the above elaboration and demonstration, the legal status of the LOCPG HK and the HKMAO become clear: the LOCPG HK, succeeding the Xinhua News Agency Hong Kong in 2000, is a representative agency rather than an organ of the Central

²² See the Regulations on the Establishment and Staffing of the Administrative Authorities of the State Council (国务院行政机构设置和编制管理条例), promulgated by Premier Li Keqiang on 3 August 1997.

²³ See Article 6 (3), Regulations on the Establishment and Staffing of the Administrative Authorities, which provides that:
“The Organs Composing the State Council, which consist of all ministries and commissions, People’s Bank of China, and audit administrations, perform the basic administrative functions of the State Council respectively in accordance with the law.”

²⁴ HKMAO, “Main duties (主要职能)”, <https://www.hmo.gov.cn/gab/zygn/>, accessed 10 July 2020.

²⁵ See the State Council Letter [2000] No. 5 (footnote 16 above). However, these assignments were not clearly specified in the Letter, which requires further investigations and discussions based on practices.

²⁶ Shuwen Wang et al., *Introduction to the Basic Law of the Hong Kong Special Administrative Region (Third Edition)* (Beijing: China Democratic and Legal Publishing House, 2006) p 140 (王叔文主编,《香港特别行政区基本法导论(第三版)》,中国民主法制出版社,2006年3月,第140页).

²⁷ Ibid.

²⁸ Ibid.

²⁹ Article 6 (4) of the Regulations on the Establishment and Staffing of the Administrative Authorities regulates that: “the Departments Directly under the State Council are in charge of specific affairs of the State Council which has no dependent administrative functions.”

³⁰ Article 6 (5) of the Regulations on the Establishment and Staffing of the Administrative Authorities regulates that “the Administrative Offices of the State Council assist the Premier of the State Council in handling special matters, which have no independent administrative functions.”

³¹ State Council, “The State Council Notice on its Organizational Structure (国务院关于机构设置的通知)”, http://www.gov.cn/zhengce/content/2018-03/24/content_5277121.htm, published 24 March 2018, accessed 10 July 2020.

People's Government that exercises the functions authorized or appointed by the Central People's Government. The HKMAO is an administrative office of the State Council that handles Hong Kong and Macau affairs that is not subject to Article 22 of the Basic Law.

3. Article 22 (1): How to distinguish "interference" from "supervision"?

"Interference" has a derogatory undertone, which may indicate an unauthorized action. For instance, the principle of "non-interference" is widely accepted in international relations and international laws because sovereign states are considered independent and equal.³² Therefore, states shall not interfere in the affairs belonging to the sovereignty of another state. Since the handover of Hong Kong to China, the PRC government has repeatedly posed a solemn stance of opposing outside forces interfering in Hong Kong affairs.³³ Here "interference" means illegal, unauthorized, and baseless actions, which is an infringement of the sovereignty of a state. On the contrary, if a sovereign has a legal basis to take certain actions, it should be considered as acting by law rather than interference.

When it comes to the definition of "interference" in Article 22 (1) of the Basic Law, the key issue is whether the Central People's Government and its representative agencies have the right to interfere, whether it is necessary to interfere and whether they should exercise interference in accordance with the law.

According to the legislative intent of Article 22 (1) of the Basic Law, it is applicable to the departments directly under the Central People's Government but not to the Central Government itself. The Hong Kong SAR is directly administered by the Central People's Government. The Central People's Government, according to the Constitution and the Basic Law, has the power and responsibility to administer the Hong Kong SAR and supervise the Region by exercising a high degree of autonomy. Such legal administration and supervision of the Central People's Government should not be regarded as "interference".

In mainland China, according to the Constitution, the State Council exercises unified leadership over the work of all the ministries and commissions as well as the local administrative organs at various levels (including the SARs). The State Council also leads the departments directly under the local governments through the subordinate departments of the ministries and commissions (not including the SAR). The State Council's leadership covers the works of urban construction, education, science, culture, sports, civil affairs, public security, judicial administration, foreign affairs, national defense, and other fields.³⁴

Here the subordinate departments refer to the organs composing the State Council and the departments directly under the State Council. These organs operate as independent administrative bodies and may issue department regulations or give instructions to subordinate departments in the local governments. In order to better implement the "one country, two systems" policy and ensure a high degree of autonomy for the Hong Kong SAR, Article 22 of the Basic Law was made to prohibit these departments and local governments in mainland China from "interfering" the affairs which the Hong Kong SAR administers on its own according to the Basic Law.

Although the Hong Kong SAR is directly under the State Council, its departments and bureaus have no direct subordinate relationships with the ministries and commissions of the State Council, which is different from mainland China, indicating the characteristics of "One Country, Two Systems". The "department of the Central People's Government" in Article 22 of the Basic Law refers to these ministries and commissions of the State Council. Through these regulations, the Basic Law aims to prevent these departments from "interfering" in Hong Kong's internal affairs within the scope of autonomy to ensure a high degree of autonomy for the SAR.

The HKMAO and the LOCPG HK are authorized to handle Hong Kong affairs on behalf of the State Council, which should not be regarded as "interference". As is discussed in the previous section, neither the HKMAO nor the LOCPG HK are organs composing the State Council or departments directly under it. Furthermore, none of the two offices have independent administrative functions and therefore cannot issue department regulations. Instead, their involvement in Hong Kong affairs should be considered as "supervision".

³² Yizheng Zou and Lee Jones, "China's Response to Threats to Its Overseas Economic Interests: Softening Non-Interference and Cultivating Hegemony" (2020) 29 (121), *Journal of Contemporary China* 92-108.

³³ Xinhua News, 2020, "Liaison office of China's central gov't in HKSAR condemns foreign interference in HK affairs", http://www.xinhuanet.com/english/2020-05/03/c_139028081.htm, published May 3, 2020, accessed August 25, 2020.

³⁴ See Article 89 of the Constitution of the PRC (amended in 2018).

The essence of "supervision" is the restriction of one power against another. In the Chinese law context, "supervision" refers to the investigation, inspection, and corrective actions from the authorized supervisor to the supervised object.³⁵ The "authorized supervisor" also includes the organ with authorization from the authorized supervisor. The characteristics and key elements of supervision are: the supervisory body is legally established; the supervisory power has a legal basis or is authorized; the supervision is conducted legally and creates corresponding legal consequences.³⁶ The supervision can be categorized as the supervision of the organs of state power (Congressional supervision), the supervision of state executive authorities (administrative supervision), the supervision of state supervisory organs (supervisory supervision), the supervision of state judicial organs (judicial supervision), the democratic supervision (such as supervision by the CPPCC), audit supervision, statistical supervision, and so on.³⁷ From the Party-State perspective, supervision also includes inner-party supervision, political supervision, disciplinary supervision, delegative supervision, inspective supervision, public supervision, media supervision, and so on.³⁸

According to the 2014 White Paper of the Practice of the 'One Country, Two Systems' in the Hong Kong SAR, the overall governance of the Central People's Government in the Hong Kong SAR is composed of the power directly exercised by the Central People's Government and its authorization to the Hong Kong SAR for a high degree of autonomy. The Central People's Government exercises the supervisory power over the high degree of autonomy of the Hong Kong SAR.³⁹ Though the White Paper is a policy document rather than a law, its interpretation of the Central People's Government's comprehensive governance power in the Hong Kong SAR is nevertheless based on a comprehensive analysis of the PRC Constitution and the Basic Law.

Under the unitary state structure, the Central People's Government has comprehensive control over its local administrative region, including the Hong Kong SAR. The comprehensive control authority of the Central People's Government includes the authority enforced directly on the SAR, the authority of granting the Hong Kong SAR a high degree of autonomy, and the authority of supervising the SAR's exercise of a high degree of autonomy. The Central People's Government's supervisory authority is a balanced power of the SAR's high-degree autonomy, and its purpose is to realize the "one country, two systems" under the principles of central authority and national unity.

Effective supervision of the Central Government on the autonomy of Hong Kong is an important way for the Central Government to effectively administer the Hong Kong SAR and is also a part of the comprehensive control. In order to maintain the prosperity and stability of the Hong Kong SAR, a local administrative region directly under the Central People's Government, the Central Government has authorized the SAR with a high degree of autonomy based on the Constitution and the Basic Law. To investigate whether the enforcement of the authorized autonomy could meet the objectives and the effects of the authorization, a corresponding supervisory mechanism needs to be established, which therefore becomes the basis of the Central People's Government's supervisory authority. Accordingly, as the authorized entity, the Hong Kong SAR must accept the supervision of the Central Government when exercising its high degree of autonomy; otherwise, the authorization will be rendered infeasible. Professor Xiao Weiyun points out that:

Hong Kong administers its affairs within the limits of high-level autonomy without the direct involvement of the Central People's Government. However, this does not mean that the Central Government will stand by in whatever situations. The high degree of autonomy of Hong Kong was authorized by the Central People's Government, which is a local autonomy subordinate to state sovereignty; hence the Central People's Government undertakes the control authority over the enforcement of the autonomy of Hong Kong.⁴⁰

Some commentators in Hong Kong stress that the Central People's Government's authority in Hong Kong is only involved in external affairs and national defense. The direct authority of the Central People's Government enforced on Hong Kong, according

³⁵ Guoquan Chen, "On the responsible government and its supervisory role in the process of its realization" (2001) 31 (2) *Journal of Zhejiang University* 28-34 (in Chinese) (陈国全, "论责任政府及其实现过程中的监督作用", 载于《浙江大学学报》, 2001年第31卷第2期, 第28-34页).

³⁶ Zehua Guo, "Taking the supervision within the party as the leading role to promote the coordination of all kinds of supervision" *Zhongguo Jijian Jiancha Bao*, <http://www.chinanews.com/gn/2019/12-06/9026527.shtml> published 6 December 2019, accessed April 23, 2020 (in Chinese) (郭泽华, "以党内监督为主导 推动各类监督贯通协同", 载于《中国纪检监察报》).

³⁷ See note 34.

³⁸ *Ibid.*

³⁹ South China Morning Post, "Full text: Chinese State Council white paper on 'One Country, Two Systems' policy in Hong Kong", <https://www.scmp.com/news/hong-kong/article/1529167/full-text-practice-one-country-two-systems-policy-hong-kong-special>, published June 10, 2014, accessed August 26, 2020.

⁴⁰ Weiyun Xiao and Zhongshu Zeng, "Guarantee and supervision of the Central People's Government on the high degree of autonomy of the Hong Kong Special Administrative Region" (1997) 4 *Neibu Wengao* 13-16 (in Chinese) (肖蔚云, 曾中恕, "论中央对香港特别行政区高度自治权的保障和监督", 载于《内部文稿》, 1997年第4期, 第13-16页).

to the Basic Law, is mainly composed of diplomatic affairs, national defense, and other external affairs concerning sovereignty.⁴¹ Apart from these affairs, the Central People's Government has the supervisory authority over the internal affairs of Hong Kong and related external affairs concerning the high-level autonomy of Hong Kong.

However, the supervisory authority of the Central People's Government is not equivalent to the authority directly exercised by the Central Government, and the supervision over Hong Kong's high-level autonomy cannot replace the enforcement of the autonomy by the Hong Kong SAR government. For instance, the National People's Congress (NPC) Standing Committee has the power to record and examine the laws enacted by Hong Kong's legislative body. If the law is inconsistent with Article 17 (3) of the Basic Law, the NPC Standing Committee may return the law to the Hong Kong SAR government without providing an amendment. The amendment of the law is the responsibility of the legislative authority of Hong Kong. According to the Basic Law, the authority that the Central People's Government exercised directly on the Hong Kong SAR includes national defense, diplomatic affairs, and other actions of the state exceeding Hong Kong's high-level of autonomy, such as setting up special administrative regions, appointing major officers in the special region, enacting, amending and interpreting the Basic Law, and the right to decide on the development of the constitutional system of the Hong Kong SAR, etc.⁴² In addition, the Central People's Government authorizes the Hong Kong SAR with a high degree of autonomy and has the inherent power to decide on the type of authorization and the realm of authorization granted to the Hong Kong SAR government. Upon authorization, the Hong Kong SAR government should accept the supervision from the Central People's Government when exercising its high-level of autonomy. The powers under supervision consist of administrative power, legislative power, independent judicial power, and final adjudication.

From the perspective of normative jurisprudence, the supervisory authority of the Central People's Government over the Hong Kong SAR can be divided as follows: the supervision of the administrative power (such as the supervision of principal officials), the supervision on the legislative power (such as the right to record and inspection laws in the Hong Kong SAR), and the supervision on the judicial power (such as the final interpretation power of the Basic Law and the supervision on Hong Kong courts' Basic Law review).

The degree and frequency of the supervision enforced by the Central People's Government are in direct relation to the outcome of the Hong Kong SAR exercising its high-level autonomy. For a long time, the supervisory authority of the Central People's Government was not emphasized in the practice of "One Country, Two Systems". However, enforcing supervisory authority in Hong Kong will become necessary or even urgent for the Central People's Government if it considers that Hong Kong's exercise of its high degree of autonomy goes wrong. Under such circumstances, the "One Country, Two Systems" strategy cannot be fully and effectively implemented, and the Hong Kong SAR's prosperity and stability are at risk. Regardless, the Central People's Government's supervisory authority over the Hong Kong SAR is not to interfere with the region's high degree of autonomy or replace the autonomy. Rather, it ensures and promotes the exercise of high-level autonomy in the Hong Kong SAR.

3.1 The "interference" stated in Article 22(1) does not apply to the Central People's Government and its agencies

The legislative intent of Article 22 of the Basic Law is to prevent the departments of the Central People's Government, namely the ministries and commissions of the State Council and the departments directly under the State Council, from "interfering" in the affairs of the Hong Kong SAR without authorization. However, Article 22(1) does not apply to the Central People's Government itself. This is because the Hong Kong SAR is directly administered by the Central People's Government, which, according to the PRC Constitution and the Basic Law, has the right and responsibility to administer the Hong Kong SAR and supervise the region's exercise of a high degree of autonomy. This kind of legal administration and supervision of the Central People's Government should not be regarded as "interferences" in Hong Kong's internal affairs.

During the drafting of the Basic Law, there was a proposal to add a clause stipulating that the Central People's Government should not interfere in the affairs that the Hong Kong SAR administers on its own, but it was revoked. Professor Wang Shuwen, a member of the Drafting Committee for the Basic Law, rebutted that;

this proposal [potentially] distorts the relationship between the Central Government and the Hong Kong SAR, which is wrong...The relationship between the Central People's Government and the Hong Kong SAR is governor and the governed. For central governance affairs, the Central People's Government exercises leadership over the Hong Kong SAR; for affairs that the Hong Kong SAR administers on its own, the Central People's Government exercises the supervision on whether the Hong Kong SAR obeys the Basic Law; as for the daily affairs of Hong Kong, the Central Government would not step in such specific affairs. This has been clearly stated in the Basic Law. Hence, it will make

⁴¹ See Hong Kong Basic Law Article 13, 14.

⁴² See Hong Kong Basic Law Articles 15, 17, and 18.

things more complicated to add a clause that the Central People's Government should not interfere in the affairs that the Hong Kong SAR administers on its own.⁴³

If the LOCPG HK is an agency of the Central People's Government in Hong Kong, can the Liaison Office "interfere" in the affairs that the Hong Kong SAR administers on its own? As discussed above, the legislative intent of Article 22 is to prevent the departments of the Central People's Government, i.e., the ministries and commissions and departments directly under the State Council, who don't have the authority to handle Hong Kong and Macau affairs, from "interfering" in the Hong Kong SAR's affairs. The LOCPG HK, which is not one of these "departments of the Central Government", has the legal right and responsibility to handle the Hong Kong-related affairs authorized or assigned by the Central People's Government.

The statement that the LOCPG HK is not a "department of the Central People's Government" in Article 22 (1) of the Basic Law is in accordance with excluding the Office from the "departments of the Central Government" as prescribed in Article 22 (2) and Article 22 (3). According to Article 22 (2) of the Basic Law, "if there is a need for departments of the Central Government, or local governments to set up offices in the Hong Kong Special Administrative Region, they must obtain the consent of the government of Hong Kong and the approval of the Central People's Government." Here the "departments of the Central Government" refer to the departments set up under local governments rather than the existing LOCPG HK, the Office of the Commissioner of the Ministry of Foreign Affairs, and the People's Liberation Army Hong Kong Garrison.

As an agency set up by the Central People's Government in the Hong Kong SAR, the LOCPG HK exercises the affairs authorized or assigned by the Central People's Government, including the supervision of violations against the principle of "One Country, Two Systems" and the Basic Law in Hong Kong. In accordance with the Basic Law, the LOCPG HK's supervisory actions should not be regarded as "interference" in Hong Kong SAR affairs. The LOCPG HK has the legal right to handle Hong Kong-related affairs authorized or assigned by the Central Government. It performs the functions on behalf of the State Council, not by itself, and any legal consequence is borne by the State Council. Therefore, the LOCPG HK's activities in Hong Kong should not be considered as "interference" in local affairs. Furthermore, if any issue appears regarding the LOCPG HK's activities, it would either be the lack of authorization from the Central People's Government or the lack of legal basis for exercising its authorized powers.

According to the State Council Letter [2000] No. 5, the LOCPG HK was given five main categories of duties, and the previous four do not involve Hong Kong's local affairs. Only the fifth duty, "Undertake other duties assigned by the Central People's Government," may involve Hong Kong SAR's local affairs.⁴⁴ Since the Central People's Government authorizes the Hong Kong SAR government to perform a high degree of autonomy, the SAR's autonomy is therefore under the supervision of the Central People's Government. The "other duties" prescribed in the State Council Letter [2000] No. 5 are assigned by the Central People's Government based on the PRC Constitution and the Basic Law. When the Central People's Government performs its supervisory authority, the duty that the Central People's Government assigns to the LOCPG HK may overlap with the Hong Kong SAR government's affairs. Under such circumstances, since the Central People's Government has the legal right to supervise the autonomy of the Hong Kong SAR, it, therefore, can authorize the LOCPG HK to perform necessary investigations, political evaluations, public opinion guidance, agency coordination, and other functions in the Hong Kong SAR. These activities that are authorized by the Central People's Government and implemented by the LOCPG HK should not be considered as "interferences". Furthermore, the HKMAO is set by the Central Government on the mainland and is authorized by the State Council to handle Hong Kong-related affairs; therefore, it may also exercise the supervisory power in the SAR on behalf of the State Council.

Therefore, according to the PRC Constitution and the Basic Law, the Central People's Government holds supervisory authority over the Hong Kong SAR's local affairs. The Central People's Government's supervisory actions in the Hong Kong SAR should not be considered as interference. Furthermore, the LOCPG HK and the HKMAO both have supervisory authority over Hong Kong affairs because their supervisory actions in the Hong Kong SAR represent the Central People's Government and hence do not constitute as interference.

4. Article 22 (2) is not the legal basis for the establishment of the LOCPG HK.

Whether the LOCPG HK falls under Article 22 (2) of the Basic Law, in other words, whether the establishment of the LOCPG HK requires the consent of the Hong Kong SAR government, was also a key point of debate in early 2020. This research contends that the LOCPG HK was not set up under Article 22 (2) of the Basic Law, and its establishment does not require consent from the Hong Kong SAR government. Furthermore, the Central Government may establish other agencies in the Hong Kong SAR when necessary, without consent from the Hong Kong SAR government.

⁴³ Wang (2006) 140.

⁴⁴ See above note 23.

As discussed in the previous sections, the renaming of the Xinhua News Agency Hong Kong Branch to the LOCPG HK in 2000 was a decision made by the State Council that did not require the consent of the Hong Kong SAR government. Instead, the State Council informed the Hong Kong SAR government by means of notification.⁴⁵ Before 1997, the Xinhua News Agency Hong Kong Branch was authorized by the Central Government, and its role as a representative office of the Central Government in Hong Kong was tacitly approved by the British Hong Kong Government. After 1997, its legal status as the central government's representative agency was clearly announced by the Central Government.

Soon after the renaming, by amending the General Clauses Ordinance of Hong Kong, the Legislative Council of Hong Kong SAR also acknowledged the legal status of the Liaison Office as the Central People's Government's representative agency and confirmed the Liaison Office's establishment did not require the SAR government's consent.⁴⁶

In Hong Kong's local legislation, the Hong Kong legislature does not distinguish central government ministries, directly administered agencies (*zhishu jigou*), or working offices (*banshi jigou*). Instead, the expressions in the Interpretation and General Clauses Ordinance are "the Central People's Government" and "subordinate organ of the Central People's Government".⁴⁷ The latter exercises executive functions authorized by the central government, which are also regarded as the "State" by Hong Kong's local legislature, making these agencies' legal status equal to the Central People's Government.

Meanwhile, as stipulated in the Ordinance, the LOCPG HK is one of the "three offices set up by the Central People's Government in the Hong Kong Special Administrative Region". A characteristic of these offices is that their authority directly comes from the Central Government; therefore, as discussed in the previous sections, the offices themselves are not independent legal entities. The Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong SAR and the People's Liberation Army Hong Kong Garrison stationed by the Central People's Government were written in the Basic Law, which according to Ordinance, are two other offices "set up by the Central People's Government in the Hong Kong Special Administrative Region".⁴⁸ Though the LOCPG HK is not listed in the Basic Law as one of the agencies set up by the Central People's Government, the status of the LOCPG HK as one of the three offices set up by the Central People's Government in the Hong Kong SAR is not affected. As the LOCPG HK's predecessor, the Xinhua News Agency Hong Kong Branch was set up in 1947, predating the Basic Law, and has been prescribed as one of the agencies established by the Central People's Government in the Hong Kong Interpretation and General Clauses Ordinance.⁴⁹

Theoretically, the Central People's Government may set up new agencies in Hong Kong when necessary without the consent of the Hong Kong SAR government.⁵⁰ As specified in Article 22 (2), only "departments of the Central Government" or "mainland local governments" need to obtain the consent of the SAR government and the approval from the Central People's Government in order to set up offices in the Hong Kong SAR. To date, no departments of the Central Government or provinces, autonomous regions, or municipalities directly under the Central Government, as stipulated in Article 22, have set up offices in the Hong Kong SAR, which indicates that this regulation has been implemented in a relatively cautious and strict manner. It can be anticipated that the establishment of mainland government organs in Hong Kong in the future would also be strictly abided by Article 22 (2) of the Basic Law.

Furthermore, Article 11 of the Organic Law of the State Council prescribes that "the State Council may, according to the work requirements and the principle of simplified and efficient administration, set up a certain number of directly subordinate

⁴⁵ Similarly, two organs, the Office of the Commissioner of the Ministry of Foreign Affairs and the People's Liberation Army Hong Kong Garrison, were also established in Hong Kong, which did not require the consent of the Hong Kong SAR government.

⁴⁶ Hong Kong legislative council LC Paper No. CB (2)2254/98-99(02) Administration's paper on "Mechanism for the setting up of 'State' organs", which provides that:

"6. The Xinhua News Agency, Hong Kong Branch, has a history of more than 50 years in Hong Kong, which has been acting as an agency of the Central People's Government to perform relevant duties in Hong Kong. After the return of Hong Kong to China, the agency is maintained and still works as an authorized agency of the Central Government. 7. As mentioned above, the current three organs of the Central Government in Hong Kong, that is, the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong Special Administrative Region, the People's Liberation Army Hong Kong Garrison, and the Xinhua News Agency Hong Kong Branch, were all established without needing the consent from the Hong Kong SAR Government."

⁴⁷ See 2017 Hong Kong Interpretation and General Clauses Ordinance, Part II "Interpretation of Words and Expressions", "State" (e).

⁴⁸ See LC Paper No. CB (2)2254/98-99(02) (footnote 42 above).

⁴⁹ See 2017 Hong Kong Interpretation and General Clauses Ordinance, Part II "Interpretation of Words and Expressions", "State" (e) (footnote 51)

⁵⁰ Similarly, if one of the LOCPG HK, the Office of the Commissioner of the Ministry of Foreign Affairs, and the People's Liberation Army Hong Kong Garrison set up an internal department or a subordinate branch in the Hong Kong SAR, they don't need consent from the SAR government but only internal or superior approval procedures from the central government.

departments to take charge of various specialized work and a certain number of administrative offices to assist the Premier in handling specialized affairs. Each agency or office shall have two to five persons responsible.”⁵¹ This law provides an additional legal basis for the Central People’s Government to set up new agencies in the Hong Kong SAR. As the Hong Kong SAR is a special region directly administered by the Central People’s Government, the latter, as a superior legal body, does not need the approval from the Hong Kong SAR, a subordinate legal body, to set up an agency in the region.

Therefore, the LOCPG HK was not set up under Article 22 (2) of the Basic Law, and its establishment does not require consent from the Hong Kong SAR government. As discussed, the LOCPG HK is an agency of the Central People’s Government rather than a department of the State Council or an office of the local governments on the Mainland. The renaming of the Xinhua News Agency Hong Kong Branch to the LOCPG HK in 2000 by the Central People’s Government did not require the consent of the Hong Kong SAR government, which indicates that the Office was not set up under Article 22 (2) of the Basic Law. This hypothesis is supported by the Hong Kong Interpretation and General Clauses Ordinance, which stipulates that the LOCPG HK is one of the three offices set up by the Central People’s Government. Furthermore, the State Council has the legal authority to set up departments to solve special issues based on the State Council Organic Law, which provides additional supportive evidence from the mainland’s perspective.

5. Article 22 (3): Should the LOCPG HK abide by the laws of Hong Kong SAR?

Article 22 (3) of the Basic Law is not applicable to the LOCPG HK, but the LOCPG HK should abide by the laws of the Hong Kong SAR. Applying the historical interpretation method, this article suggests a contextual relationship between Article 22 (2) and Article 22 (3). According to Article 22 (2), all offices set up in the Hong Kong SAR by departments of the Central Government, provinces, autonomous regions, and municipalities directly under the Central Government, and the personnel of these offices shall abide by the laws of the Hong Kong SAR. As the LOCPG HK was not set up according to Article 22 (2), it is therefore not subject to Article 22 (3).

Nonetheless, the LOCPG HK should abide by the laws of the Hong Kong SAR. First, the LOCPG HK abides by the PRC Constitution and should take the Constitution as its fundamental legal basis of operation. According to Article 5 (4) of the PRC Constitution, “all state organs must abide by the Constitution and the law. All acts in violation of the Constitution or the law must be investigated”. Article 5 (6) regulates that “no organization or individual is privileged to be beyond the Constitution or the law.” Therefore, PRC Constitution features the first law-abiding basis for the LOCPG HK in the Hong Kong SAR.

Second, the State Council Letter [2000] No. 5 regulates that “the Liaison offices of the Central People’s Governments in the Hong Kong and Macao Special Administrative Regions and their personnel shall strictly abide by the Basic Law and local laws to perform their duties.” This policy provides the second legal basis for the LOCPG HK to follow the Hong Kong local laws.

Third, since Hong Kong’s handover to China, the Central CCP leadership and the Central People’s Government have constantly emphasized the comprehensive and faithful implementation of the “One Country, Two Systems” principle. The principle requires that relative departments and agencies handle Hong Kong affairs in strict accordance with the PRC Constitution and the Basic Law. These legal stances are also the basis for the Central People’s Government to exercise comprehensive control over the Hong Kong SAR. If the Central People’s Government itself strictly abides by the PRC Constitution and the Basic Law, its agencies in Hong Kong should also act in accordance with the laws. Therefore, even though Article 22 (3) of the Basic Law is not applicable to the LOCPG HK, it should follow the local laws of Hong Kong SAR.

Fourth, the predecessor of the LOCPG HK - the Xinhua News Agency Hong Kong Branch was, abided by the laws of Hong Kong before the establishment of the Hong Kong SAR and the enactment of the Basic Law. Therefore, after the handover of Hong Kong to China, the LOCPG HK should also abide by the local law of Hong Kong.

6. Conclusion

The debate over the legal status of the LOCPG HK in April 2020 reveals contested interpretations of Article 22 of the Basic Law in China mainland and Hong Kong. Reflecting on the debate, this research aims at providing comprehensive analyses to Article 22 and clarifies the legal status of the LOCPG HK and the HKMAO, two agencies at the very center of the contest. It argues that the LOCPG HK and the HKMAO are not departments of the Central People’s Government, hence not subject to Article 22 of the Basic Law. Furthermore, the agencies’ comments toward Hong Kong issues should be regarded as exercising their legal authorities to supervise Hong Kong affairs rather than as “interference”. Though Article 22 (3) is not applicable to the LOCPG HK, the office should still abide by the local laws of the Hong Kong SAR.

⁵¹ See Article 11 of the 1982 Organizational Law of the State Council PRC (国务院组织法).

One of the key contests in the debate is whether the LOCPG HK and the HKMAO are departments of the Central People's Government as prescribed in Article 22 (1) of the Basic Law. This research concludes that the agencies are "administrative offices" of the State Council. The evidence is that the predecessor of the LOCPG HK, the Xinhua News Agency Hong Kong Branch was a representative agency of the Central People's Government rather than a department. Therefore, the LOCPG HK remained a representative agency after its renaming in 2000, which is triangulated by Hong Kong's local legislation and the State Council's overall structural setup. Furthermore, the HKMAO is an administrative office of the State Council rather than the organs composed of the State Council or the departments directly under the State Council, as is supported by the 2018 Notice of the State Council on the Establishment of the State Bureaus.

This research then concludes that the Central People's Government and the LOCPG HK's involvement in HK affairs is "supervision" rather than "interference," as argued by the critics from HK media. Analyzing the PRC Constitution and the legislative intention of the Basic Law, this research lands on the conclusion that the Central People's Government has the lawful power to supervise and be directly involved in Hong Kong's management. The HKMAO and the LOCPG HK are authorized to handle Hong Kong affairs on behalf of the State Council, and their involvements in the Hong Kong SAR's local affairs should be regarded as "supervision" rather than "interference".

A relating question is whether the establishment of the LOCPG HK should obtain the approval of the HKSAR government, in other words, whether Article 22 (2) applies to agencies directly established by the Central People's Government. This research extends that the LOCPG is not subject to Article 22 (2) of the Basic Law. Furthermore, when necessary, the Central People's Government may directly establish other agencies in the HKSAR without the local government's consent. An example is the newly established HKSAR National Security Bureau in June 2020.⁵² Lastly, this research analyses Article 22 (3) of the Basic Law and concludes that though the LOCPG HK and the HKMAO are not subject to Article 22 (3) of the Basic Law, they should still abide by the laws of the Hong Kong SAR. This conclusion is based on three pieces of evidence, the PRC Constitution, the State Council Letter [2000] No. 5, and the principle of "One Country, Two Systems".

Reviewing the debate over the legal status of the LOCPG HK in relation to Article 22 of the Basic Law, this research suggests four principles in interpreting the Basic Law to set up a consensus between Mainland and Hong Kong legal communities. First, the interpretation and implementation of the Basic Law should always base on the original text of the Basic Law. Second, interpretation of the Basic Law should incorporate the original intention, purpose, the structure of the Basic Law; in other words, the historical analysis should become the principle for Basic Law interpretation. Third, as the Basic Law was promulgated by the National People's Congress, the Basic Law interpretation should follow the principles of Chinese public law and Chinese legal concepts. For instance, understanding the departments of the Central People's Government and the difference between "interference" and "supervision" all requires the comprehension of Chinese constitutional principles and the Central-SAR government relationship. The authors are aware that there is a limitation to the research as the interpretation of Article 22 is discussed primarily through the lens of China's Mainland legal traditions rather than common law canons. The limitation suggests that for future research on the interpretation conflicts of the Basic Law, it is worth focusing on balancing the perspectives of China Mainland and Hong Kong.

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⁵² ABC News, "China to establish national security bureau in Hong Kong", <https://abcnews.go.com/International/wireStory/mention-hong-kong-security-law-china-closes-meeting-71359281>, 21 June 2020, accessed 3 November 2020.

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