

THE HONG KONG BAR ASSOCIATION'S STATEMENT
CONCERNING THE INTERPRETATION MADE BY
NATIONAL PEOPLE'S CONGRESS STANDING COMMITTEE
OF ARTICLE 104 OF THE BASIC LAW

1. The Bar expresses deep regrets for the interpretation issued by the Standing Committee of the National People's Congress ("NPCSC") concerning Article 104 of the Basic Law ("the Interpretation"). The Bar reiterates that it is unnecessary, and indeed would do more harm than good, for the NPCSC to issue the Interpretation in haste at this juncture.

2. There are express provisions contained in the Hong Kong Oaths and Declarations Ordinance dealing with the issue of oath-taking stipulated in Article 104 of the Basic Law, which duly reflects the spirit of the article. The Bar considers that the detailed provisions contained in the Interpretation are unnecessary and inappropriate. The way in which the matter has been handled would inevitably give the impression that the NPCSC is effectively legislating for Hong Kong, thereby casting doubts on the commitment of the Central People's Government to abide by the principles of "One Country Two Systems, Hong Kong People Ruling Hong Kong, and High Degree of Autonomy".

3. The Interpretation provides that if any relevant individual gives what would be held to be an invalid oath, such individual will not be

granted another opportunity to retake the oath. The issue as to the legal consequence of an invalid oath has already entered into the judicial process, and the relevant cases have been argued before the Court and are awaiting determination. The Bar considers the timing of the making of the Interpretation at this highly sensitive moment by the NPCSC is most unfortunate, in that the perception of the international community in the authority and independence of the judiciary is liable to be undermined, as would public confidence in the rule of law in Hong Kong.

7 November 2016

Hong Kong Bar Association