

Statement of the Hong Kong Bar Association
On the Department of Justice's recent decision not to prosecute Mr. C. Y. Leung

The Hong Kong Bar Association ("HKBA") notes the public concerns which have been expressed over the decision of the Department of Justice ("DoJ") not to prosecute Mr. C. Y. Leung, the former Chief Executive of the HKSAR, over the "UGL incident", a decision which had been reached without the benefit of any legal advice obtained from counsel independent of the DoJ. The HKBA further notes that the failure to instruct and obtain independent counsel's advice represents a departure from past convention where the DoJ would seek such advice in cases involving senior government officials and which were perceived to be of a politically sensitive nature.

The HKBA reiterates that it respects the role and the duty of the DoJ in controlling criminal prosecutions, free from any interference, under article 63 of the Basic Law. Any decision whether to prosecute or not in a given case must be made independently, and fully seen by the public to be made independently, free from any interference or influence, whether of a political nature or otherwise.

The departure from the commendable and well-recognised convention as stated above raises justifiable doubts as to whether the decision in question was reached free from any bias or political considerations. This is particular so in view of the current position of Mr. Leung as the Vice Chairman of the National Committee of the Chinese People's Political Consultative Conference. Any doubt as to the process by which the DoJ reached the decision not to prosecute will inevitably erode confidence in the criminal justice system and the rule of law.

The HKBA urges the DoJ to review its decision after obtaining independent counsel's advice such that public concerns over the integrity of the decision-making process could be allayed.

HONG KONG BAR ASSOCIATION

Dated: 21 December 2018