

**The Acting Chief Executive's Request for NPCSC
Interpretation of Article 53 of the Basic Law of the HKSAR**

STATEMENT OF THE HONG KONG BAR ASSOCIATION

1. The Hong Kong Bar Association ("the Bar") has considered the Report lodged by the Acting Chief Executive ("Acting CE") of the Hong Kong Special Administrative Region ("HKSAR") whereby the Acting CE requests, through the State Council, the Standing Committee of the National People's Congress ("NPCSC") to interpret Article 53 of the Basic Law of the HKSAR and the views exchanged during the forum held with officials of the Central Authorities and members of the Hong Kong legal profession on 12th April 2005 at Shenzhen.

2. The Bar notes that two applications for leave to apply for judicial review had already been filed with the Court of First Instance. These applications raise for the Court's consideration legal issues concerning the term of the new Chief Executive to be elected on 10th July 2005 and the validity of the Chief Executive Election (Amendment) (Term of Office of the Chief Executive) Bill which was introduced to the Legislative Council on 6th April 2005.

3. Whilst we fully acknowledge the NPCSC's power to interpret the Basic Law, the Bar is extremely disappointed with the circumstances which led to the request for an interpretation of Article 53 of the Basic Law by the NPCSC.

4. When there are pending legal proceedings raising issues of interpretation of the Basic Law, we believe the matter is best left to the Court and therefore the Court should not be deprived of the chance to adjudicate on the matter. By so doing, the NPCSC's power to interpret the Basic Law will not be affected since, as and when necessary, the matter can be referred by the Court of Final Appeal to the NPCSC pursuant to the provisions in Article 158 of the Basic Law. When issues of interpretation of the Basic Law have yet to be decided by the Court, any request made by the HKSAR's Government for interpretation by the NPCSC amounts to an attempt by the executive to pre-empt the independent judicial power of the Court to decide the matter, including the important question of whether there should be a reference to the NPCSC. Not only will such request by the executive negate the separation of powers which underpins the system laid down in the Basic Law, it shows scant respect to the rule of law and will understandably cause alarm to people in Hong Kong as well as to informed observers in the international community.

5. Whilst the Bar will continue to do its utmost to protect the rule of law and to uphold the principle stated in the preceding paragraph, we have considered the Acting CE's concern that the pending legal proceedings may not be concluded in time to enable a timely election for the new Chief Executive on 10th July 2005. We are extremely disappointed that matters have developed to such a stage that the Acting CE decided to request NPCSC's interpretation and that the legal issues cannot be properly argued and resolved by the Court.

Hong Kong Bar Association

14th April, 2005