

## Constitutional Development

### Press Statement of the Hong Kong Bar Association

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1. The Hong Kong Bar Association (“HKBA”) understands that the Hon. Margaret Ng will move a motion on constitutional development at the Legislative Council meeting on 7 January 2009.
2. In our submissions dated 24 August 2007 (“HKBA Submissions”), the HKBA dealt with the legal issues arising from the Green Paper on Constitutional Development published by the Government in July 2007. The HKBA’s stance on constitutional development remains as set out in the HKBA Submissions. In view of the debate at the Legislative Council tomorrow, the HKBA would like to highlight the following matters:
  - (1) the constitutional development of the Hong Kong Special Administrative Region (“HKSAR”) towards universal suffrage is to be achieved within the framework prescribed in the Basic Law<sup>1</sup>;
  - (2) Article 39 of the Basic Law provides that the provisions of the International Covenant on Civil and Political Rights (“ICCPR”) as applied to Hong Kong shall remain in force and shall be implemented through the laws of the HKSAR;
  - (3) Article 25 of the ICCPR stipulates as follows: “Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 [i.e. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status], and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by

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<sup>1</sup> The reference to the Basic Law in this Press Statement includes the Interpretation by the Standing Committee of the National People’s Congress (“NPC”) on Article 7 of Annex 1 and Article III of Annex II of the Basic Law of the HKSAR (adopted on 6 April 2004) and the Decision of the Standing Committee of the NPC on Issues Relating to the Methods for Selecting the Chief Executive of the HKSAR and for Forming the Legislative Council of the HKSAR in the Year 2012 and on Issues Relating to Universal Suffrage (adopted on 29 December 2007).

universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”;

- (4) the provisions in the ICCPR are implemented through the Hong Kong Bill of Rights Ordinance (Cap. 383);
  - (5) the reservation previously made in respect of the applicability of Article 25(b) of the ICCPR (and repeated in section 13 of the Hong Kong Bill of Rights Ordinance) can no longer be used to justify a departure from the rights guaranteed by Article 21 of the Bill of Rights: see *Lee Miu Ling v Attorney General (No. 2)* (1995) 5 HKPLR 181, per Keith J. at pp. 197-198;
  - (6) the HKBA urges the HKSAR Government to devise and implement, within the constitutional framework laid down in the Basic Law, a method for the selection of the Chief Executive by election and a method for forming the Legislative Council that are fully in line with Article 25 of ICCPR; in both cases, the method to be devised should not contain any discriminatory distinction or unreasonable restrictions and must ensure to every resident of the HKSAR the right and opportunity to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage, guaranteeing the free expression of the will of electors.
3. The present election method involving functional constituencies raises the question of whether Article 25 of ICCPR has been fully complied with. When putting forward proposals for constitutional reform, the Government of the HKSAR should include proposals that would eventually lead to the total abolition of functional constituencies and demonstrate its commitment towards developing an electoral system that is in compliance with Article 25 of ICCPR.

Hong Kong Bar Association  
6 January 2009