

**The Necessity for Separate Legal Representation Arising  
from the Secretary for Justice’s Request to  
the Court of Final Appeal on the Right of Abode of Children Born in Hong Kong  
to Non-Hong Kong Residents from the Mainland China**

**Statement of the Hong Kong Bar Association**

1. The appeal in respect of right of abode of foreign domestic helpers (“**FDHs**”) in Hong Kong will soon be heard by the Court of Final Appeal (“**the Court**”) between 26<sup>th</sup> and 28<sup>th</sup> of this month (FACV 19, 20/2012).
2. In this appeal, the Secretary for Justice will be requesting the Court to make a reference, under Article 158(3) of the Basic Law of the HKSAR, to the Standing Committee of the National People’s Congress (“**NPCSC**”) for an interpretation to clarify certain issues concerning the binding effect of the NPCSC’s 1999 interpretation of Articles 22(4) and 24(2)(3) of the Basic Law. In his statement issued on 13 December 2012, the Secretary for Justice remarked that the clarification of those issues by the NPCSC “can facilitate a proper interpretation of the right of abode for all categories of persons under BL 24(2) including FDHs”.
3. The Court’s decision on whether to accede to the request by the Secretary for Justice for a reference under Article 158(3) of the Basic Law will have far-reaching repercussions on the right of abode of children born in Hong Kong to non-Hong Kong residents from the Mainland China. Since the fundamental rights of those children would be affected, the principle of natural justice requires that arguments reflecting and safeguarding their rights and interests should be put forward and considered by the Court in the appeal. However, the Hong Kong Bar Association is deeply concerned that those children, who are not parties to the appeal, will have no legal representation before the Court to make submissions on their behalf on the legal question of whether any reference should be made under Article 158(3) of the Basic Law.

4. The HKSAR Government is the Respondent in the appeal. The Secretary for Justice, in his role as legal advisor to the HKSAR Government, advises the HKSAR Government and instructs Counsel to advocate the HKSAR's position. On the other hand, the Secretary for Justice has a noble, unique and far more important role, namely the guardian of justice and the public interest. The Hong Kong Bar Association therefore urges the Secretary for Justice to take such steps as are appropriate and necessary, including making any necessary application to the Court for the appointment of separate counsel to represent the children concerned, so that submissions reflecting their rights and legitimate expectations can be fairly and adequately presented by their legal representatives to the Court, thereby protecting the interests of those children. Given the hearing is soon to take place, the HKBA urges the Secretary for Justice to take the requisite steps immediately.

HONG KONG BAR ASSOCIATION

Dated 14<sup>th</sup> February 2013.