

## Statement of the Hong Kong Bar Association

### on the Decision of the Hong Kong Special Administrative Region Government ("Government") to Disqualify Four Legislators

1. On Wednesday, 11 November 2020, the Government announced that four legislators are to be disqualified. This decision was purportedly made on the basis that these four legislators, having earlier been considered by the returning officers of the now postponed seventh term of the Legislative Council ("**Legco**") to have failed to comply with the nomination criteria for *that* election, should not be allowed to remain in office for the *current*, extended, sixth term of Legco effective from 30 July 2020.
2. The legal basis for the Government's decision was also purportedly to be pursuant to the Decision of the Standing Committee of the National People's Congress ("**NPCSC**") made on 11 November 2020 ("**Decision**") - which was resolved just minutes before the Government had announced the disqualification of the four legislators. It now appears that it was the Government that had sought the Decision precisely with a view to disqualifying the four legislators.
3. Article 79 of the Basic Law sets out the circumstances under which a legislator may be disqualified from office. The Government's approach to seek and implement the Decision introduces an entirely different way to disqualify a legislator outside Article 79 but without due process. Further, the Government has sought to apply the Decision retroactively and base its decision to disqualify the four legislators entirely on the decisions of the relevant returning officers who, at the relevant time (July 2020), were not even required to deal with questions relating to the present extended term of Legco.
4. Legal certainty has been greatly impaired.
5. As a result of the Government's approach and with the Decision, the role of executive officials - the returning officers in this case - have been effectively and illegitimately elevated to being decisions of constitutional importance when those decisions have not been reviewed by the Courts nor are they free from controversy.
6. It is a basic tenet of the Rule of Law that no person shall be deprived of their rights without due process. The entirety of the Government's approach in stripping the four legislators who have been chosen by the electorate in their respective functional or geographical constituencies of their right to continue in office, determined exclusively by the executive, and without affording them an opportunity to be heard, violates the basic principles of fairness and due process inherent in the Rule of Law.

Dated: 12 November 2020