

Statement of the Hong Kong Bar Association

1. The Hong Kong Bar Association (“**HKBA**”) makes this Statement in response to recent remarks which were attributed to Ms. Elsie Leung (“**Ms. Leung**”) (the first Secretary for Justice of the Government of the HKSAR and currently a Deputy Chairperson of the Committee for the Basic Law of the HKSAR and the Standing Committee of the National People’s Congress (“**NPCSC**”)) and widely reported by the Hong Kong media.
2. Ms. Leung gave a talk entitled “The Legal Challenges since the Handover” on 6 October 2012 under the auspices of the Institute of Social Science of the Hong Kong College of Technology. She was reported to have made express references to the *Ng Ka Ling* judgment of the Court of Final Appeal in 1999 and said that the legal profession in Hong Kong, including judges, had a poor understanding of and misunderstood the Central-HKSAR relationship. She was also reported to have said that if the judges had the correct and necessary understanding, mistakes would not have been made.
3. According to reports, she also said that in relation to the issue of “Doubly Non-permanent Mainland Women” giving birth in Hong Kong, her preferred solution (which she had stated earlier in March 2012) was for the Chief Executive of the HKSAR to report to the State Council for the purpose of seeking an interpretation of the Basic Law by the NPCSC.
4. Under the Basic Law, the NPCSC has the power to interpret provisions of the Basic Law. The Courts of the HKSAR have consistently acknowledged this power of the NPCSC to interpret provisions of the Basic Law in accordance with the Basic Law.
5. However, the legal and judicial systems of Hong Kong are based on the common law. It is a cardinal principle of the common law that the interpretation of all enacted laws is a matter solely for the judges when deciding cases litigated before them.

6. The Basic Law of the HKSAR has expressly:

- (i) recognized the above matters;
- (ii) vested the HKSAR with “independent judicial power, including final adjudication”;
- (iii) provided for the continuation of the common law based legal system;
- (iv) authorized the courts of the HKSAR when adjudicating cases to interpret on their own the provisions of the Basic Law within the limits of the autonomy of the HKSAR, as well as to interpret other provisions of the Basic Law but subject to the requirement to refer, before final adjudication, to the NPCSC to interpret the provisions of the Basic Law concerning affairs which are the responsibility of the Central People’s Government and the relationship between the Central Authorities and the SAR.

7. It is well-established that the interpretation of the Basic Law in the HKSAR is a task entrusted by the Basic Law to the Courts of the HKSAR and to be exercised independently. The HKBA re-iterates that Judicial Independence is an indispensable and most important facet of the application and adherence of the Rule of Law in Hong Kong. The Judiciary of the HKSAR is locally and internationally renowned, recognised and respected for its independence, integrity, ability, credibility and transparency. Any act which interferes, or which may be perceived as interfering, with the independence of the Judiciary in Hong Kong must be viewed with great circumspection even if otherwise within the letter of the law.

8. In Hong Kong, litigation is conducted by an adversarial system. Parties and their legal advisors are entitled and are expected to assist the Court in deciding cases by placing relevant arguments, evidence and materials before the Courts.

9. The HKBA is confident that the Courts of the HKSAR will continue to interpret laws and the constitutional instruments of the HKSAR by reference to established principles of interpretation on the basis of arguments, evidence and materials which

are properly placed before the Courts by litigants and their legal advisors.

Dated 10 October 2012.

THE HONG KONG BAR ASSOCIATION