

**PROCEDURE ADOPTED FOR  
REFERRING QUESTIONS ON THE INTERPRETATION  
OF PARAGRAPH 1, ARTICLE 13 AND  
ARTICLE 19 OF THE BASIC LAW OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION TO  
THE STANDING COMMITTEE  
OF THE NATIONAL PEOPLE'S CONGRESS  
IN THE CASE  
DEMOCRATIC REPUBLIC OF CONGO & ORS  
V.  
FG HEMISPHERE ASSOCIATES LLC**

**INTRODUCTION**

This paper provides information on the procedure that has been adopted in making the reference to the Standing Committee of the National People's Congress (NPCSC) of the four questions of interpretation of the relevant Basic Law articles in the case *Democratic Republic of Congo & Ors v. FG Hemisphere Associates LLC* (FACV 5-7/2010) ("the Congo case") as requested by the Legislative Council Secretariat in its letter to the Administration dated 3 October.

2. In its provisional judgment handed down on 8 June 2011 in the Congo case, the Court of Final Appeal ("the CFA") decided, by a majority, to refer four questions on the interpretation of Articles 13(1) and 19 of the Basic Law to the NPCSC under Article 158(3) of the Basic Law of the Hong Kong Special Administrative Region.

3. On the procedure to be followed on reference, the CFA in the provisional judgment took the view that the above questions "are to be referred by the Secretary for Justice through the Office of the Commissioner of the Ministry of Foreign Affairs to the Standing Committee", subject to any submissions which any party to the

proceedings may wish to make on the above procedure within 7 days of the delivery of the provisional judgment (paragraphs 408 and 414).

4. In light of the above decision by the CFA, the Secretary for Justice, as the Intervener in the Congo case, lodged written submissions with the CFA, stating that he stood ready to assist in the transmission of the letter for judicial reference under Article 158(3) of the Basic Law from the CFA to the NPCSC through the usual and proper channel for transmitting official documents by the Government of the HKSAR to state bodies in the Mainland, provided that the letter was to be issued by the CFA and addressed to the NPCSC. The Secretary for Justice also submitted that in assisting the CFA in this regard he would be acting as no more than a conduit of official communication for passing on the letter of referral through the proper channel to the NPCSC for interpretation of the provisions concerned under Article 158(3) of the Basic Law. The above submissions were accepted by the CFA.

#### **PROCEDURE ADOPTED IN THE CONGO CASE**

5. Pursuant to Article 158(3) of the Basic Law, and following its provisional judgment in the Congo case on June 8, 2011, the CFA referred the above four questions on the interpretation of Articles 13(1) and 19 of the Basic Law to the NPCSC in a letter dated 30 June 2011 addressed to the General Office of the NPCSC. The letter of referral and the supporting documents were delivered to the Secretary for Justice on the same date for transmission to the NPCSC through the usual channels.

6. In response to the CFA's request, the Secretary for Justice forwarded the letter of referral and the supporting documents to the Hong

Kong and Macao Affairs Office of the State Council on 5 July 2011 for transmission to the NPCSC.

7. On 26 August 2011, upon the motion of the Council of Chairmen that the draft interpretation be examined by the NPCSC pursuant to the CFA's request, the NPCSC issued the *Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress* ("the Interpretation").

8. The Secretary for Justice was requested by the Hong Kong and Macao Affairs Office of the State Council to transmit the Interpretation to the CFA. On 30 August 2011, the Secretary for Justice transmitted the Interpretation to the CFA through the Registrar.

9. Upon receipt of the Interpretation, the CFA forwarded the Interpretation to the parties to the proceedings and proceeded to consider its judgment in the light of the Interpretation. On 8 September 2011, the CFA handed down its final judgment in the Congo case.

10. On 16 September 2011, the Interpretation was published in the Gazette as L.N. 136 of 2011.

### **CFA's DISCRETION**

11. Article 158(3) of the Basic Law requires that if the courts of the HKSAR, in adjudicating cases, need to interpret the provisions of the Basic Law concerning affairs which are the responsibility of the Central People's Government, or concerning the relationship between the Central Authorities and the HKSAR, and if such interpretation will affect the judgments on the cases, the courts of the HKSAR shall, before making their final judgments which are not

appealable, seek an interpretation of the relevant provisions from the NPCSC through the CFA.

12. No specific procedure is stipulated under the Basic Law or otherwise as to how a letter of referral by the CFA is to be transmitted to the NPCSC. Against this background, while the CFA saw it fit to transmit its letter of referral to the NPCSC in the case of Congo in the manner mentioned above, it is open to the CFA to adopt a different transmission procedure in a future case, if it considers appropriate.

**Department of Justice**

**6 October 2011**