

For information

LegCo Panel on Administration of Justice and Legal Services

**Response to the letter from the Chairman of the AJLS Panel
in respect of issues arising from the remarks made by
Ms Elsie Leung Oi-sie at a seminar on 6 October 2012**

Purpose

The Panel will discuss at its meeting on 27 November 2012 issues arising from the remarks made by Ms Elsie Leung Oi-sie at a seminar on 6 October 2012. The Chairman of the Panel invited, vide her letter dated 24 October 2012, the Secretary for Justice to attend the discussion of this item. This paper summarises the response of the Department of Justice in relation to the item and other related issues for Members' reference.

Stance of the Government

2. On 7 October 2012, when asked during a media session on the remarks made by Ms Elsie Leung on the preceding day, the Chief Secretary for Administration reiterated that the rule of law and judicial independence are the core values of Hong Kong.

3. On 10 October 2012, the Department of Justice issued a statement stating :

".... a spokesman for the Department of Justice said that judicial independence and rule of law are Hong Kong's core values. Article 85 of the Basic Law specifies that the courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, free from any interference. The Government is committed to upholding judicial independence and rule of law."

4. It was also on the same day that the Hon Dennis Kwok wrote to the Chief Executive to raise his concerns on the remarks of Ms Leung. The Chief Executive's Office issued a reply dated 16 October 2012. A copy of the reply (in Chinese only) is at the **Annex**.

5. On 27 October 2012, in response to questions raised during a media session after the Opening Ceremony of Law Week 2012, the Secretary for Justice stressed that he and his colleagues at the Department of Justice would continue to uphold rule of law and independent judiciary.

6. As regards some other recent discussion concerning the legal system of the HKSAR, we would like to make the following points:

(a) The Basic Law provides that the legal system and the laws previously in force in Hong Kong shall be maintained. Under the Basic Law, Hong Kong remains as a common law jurisdiction, and enjoys independent judicial power, including that of final adjudication. Rights and freedoms of Hong Kong residents and other individuals are also safeguarded by the Basic Law and the relevant laws.

(b) However, the common law is not static, which is one of its greatest strengths. After 1 July 1997, the courts continue to develop our jurisprudence. Further, legislative exercises of various kinds have also been going on in Hong Kong with a view to improving our laws and our court systems. The legal and judicial systems of the HKSAR have been working well, and have continued to develop, since reunification. Under the framework of the Basic Law, our laws, including both common law and legislation, have been (and will continue to be) developing with time. The Civil Justice Reform launched by the Judiciary in 2009, which has brought significant improvements to our legal system, is a good illustration.

Conclusion

7. Judicial independence and rule of law are integral parts of the

core values of our community, and they are safeguarded by the Basic Law as well as cherished by the local community. Hong Kong's success in this respect is generally recognised by the international community.

8. The HKSAR Government attaches great importance to all matters concerning judicial independence and rule of law, and is committed to upholding these two important principles. This is the consistent position taken by the HKSAR Government and the Department of Justice.

Department of Justice
November 2012

#378372



Annex

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立法會綜合大樓
813 室
郭榮鏗立法會議員辦公室
郭榮鏗議員

郭議員：

十月八日致行政長官的信件收悉，謹此致謝。

香港作為一個法治社會，司法獨立受到《基本法》的保障。《基本法》第 85 條對此作了明確的規定：「香港特別行政區獨立進行審判，不受任何干涉，司法人員履行審判職責的行為不受法律追究」。特區政府會繼續致力維護司法獨立。

就梁愛詩女士的言論，在尊重言論和表達自由的原則下，我們不予評論。

有關雙非孕婦的問題，由於當中涉及到相當複雜的法律問題，特區政府正作多方面詳細考慮，律政司司長亦已親自處理有關事宜。

行政長官私人秘書 陳嘉修

二零一二年十月十六日