

Letterhead of HONG KONG BAR ASSOCIATION

LC Paper No. CB(2)2312/99-00(01)

7th June, 2000.

Ms. Margaret Ng
10/F., New Henry House,
Ice House Street,
Central, Hong Kong.

***Re: LegCo Panel on Administration and
Legal Service Meeting on 20th June 2000***

I refer to your letter to the Hong Kong Bar Association dated 18th May 2000. At page 2 of your letter, your Panel seemed to have impliedly accepted the basic premise of two points raised by the Department of Justice:-

- (a) That the NPCSC can only interpret the Basic Law and national laws applicable to Hong Kong but not local legislation;
- (b) That the NPCSC does not undo a court's decision in favour of a particular party to the proceedings.

In our view, the validity of these premises are questionable.

On the first issue, while it is of some comfort to hear the Administration's interpretation of the legislative power of the NPCSC. this is not as straight forward as it appears. I would like to draw the Panel's attention to the following:-

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- (i) Article 67(4) of the Constitution which empowers the NPCSC "to interpret laws" is not subject to any qualification. Please note that whereas the NPCSC can only "partially supplement and amend" laws passed by the NPC (Article 67(3)), the power to interpret laws is not so restricted.
- (ii) NPCSC being the executive organ of the highest legislative body in China presumably has the ultimate power to deliver legislative interpretation on all laws having legal effect in China. Whereas the resolution of the 19th NPCSC meeting held on 10th June 1981 did provide under paragraph 4 that local laws could be interpreted by local authorities, that power of interpretation was delegated by the NPCSC and is, on the face of it, subject to the NPCSC's power to interpret laws generally as provided under paragraph 1 thereof, much in the same way as provided in Article 158 of our Basic Law.
- (iii) The NPCSC has never, as far as I know, publicly declared that it had no power to interpret local laws of Hong Kong. Even if it did, it is questionable, it being the supreme legislative body, whether it can bind its future sessions. *Prima facie*, the 19th NPCSC meeting resolution can be changed. Indeed, there was such an attempt just a few weeks ago when the NPC debated whether to enact a provision in the Legislation Law revoking that very resolution in order to give more interpretative power to the Courts. That attempt, however, was not successful in that there was considerable resistance to abrogating interpretative powers given to other departments, notably that of the People's Procuratorates.

On the second issue, whereas the actual result of a decision may not be disturbed, the decision itself of the CFA is revoked. The law declared in such a decision, therefore, is changed. That will directly affect people in Hong Kong who have conducted their dealings in accordance with the law as declared by the CFA before such an interpretation, as indeed they are obliged to do, as the law must be obeyed until it is changed.

This is particularly so when the Interpretation made by the NPCSC on 26th June 1999 does purport (and the Administration certainly seeks to argue) to have retrospective effect.

I would be grateful if you can pass on my views to members of the Panel in reply to your letter.

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The Bar will be represented on the 20th June 2000 although at the moment I cannot confirm whether I personally can attend as I have Court engagement on that day.

Ronny K. W. Tong, S.C.
Chairman

c.c. Philip Dykes, S.C.
Johannes Chan