

Secretary for Justice on Basic Law

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Following is the transcript of remarks made by the Secretary for Justice, Mr Rimsky Yuen, SC, after attending the seminar "Legal and Dispute Resolution: Key for International Trade" in Jakarta, Indonesia, today (September 17):

Reporter: Do you think it is fair to say that separation of powers does exist under the legal framework as part of the common law regime?

Secretary for Justice: In the context of separation of powers, we can describe that as a political doctrine; you can describe that as a principle of governance. In Hong Kong, there have been discussions about this doctrine or principle. But I think the crux of the matter as far as HKSAR is concerned, after July 1, 1997, one looks at nowhere but the Basic Law. The Basic Law is crystal clear, particularly if you look at Chapter 4 of the Basic Law. Chapter 4 deals with the political structure. And Article 43 states quite clearly that the Chief Executive is the head of the HKSAR. In that capacity, he represents HKSAR and it is also in the same provision that sets out the double accountability principle. And in so far as the rest of Chapter 4 is concerned, it goes on to deal with, first of all, the executive authorities of Hong Kong, then the legislative authorities of Hong Kong and the Judiciary of Hong Kong. If you look at the executive authorities of Hong Kong, Article 60 of the Basic Law also said the Chief Executive is the head of the HKSAR Government. In that sense, the position of the Chief Executive is very clearly set out in Hong Kong. But as we have been stressing ever since this incident has arisen, the important point is no one is suggesting that the Chief Executive of Hong Kong is above the law. I do not believe that is the intention of the speech in question either. I don't think anyone who has read the Basic Law would have understood it that way. And also I think one can see as a matter of fact, as a matter of daily operation ever since July 1, 1997, the

Chief Executive has never been and will never be above the law. If you look at the crux of the matter, stripped of all the debates, which if I may say are not that really essential to the issue, the crux of the matter is whether one should have any concern that there is any suggestion of change of circumstances which would cause people to believe that the Chief Executive would be above the law. That I think is a question that can have only one answer and that the answer is no. The Chief Executive has been and will continue to be subject to the monitoring by the legislature and the Judiciary.

(Please also refer to the Chinese portion of the transcript.)

Ends/Thursday, September 17, 2015