

# BASIC LAW BULLETIN

## Editor's Note

In the "Focus" section of this issue, we discuss how the principle of "one country, two systems", enshrined by the BL, facilitates the development of the arbitration system in the HKSAR. The HKSARG has a long-standing policy of promoting Hong Kong as a leading international legal and dispute resolution services centre in the Asia Pacific region. Factors contributing to the development of the arbitration system include the fact that Hong Kong retains its own legal system based on the common law and the upholding of judicial independence at a constitutional level. Enforcement of the arbitral awards made in Hong Kong in other jurisdictions is facilitated by the continuing application of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in the HKSAR after 1997. A strong legal profession ensures that sufficient experienced and skillful lawyers who can act as arbitrators or appear in arbitral proceedings conducted in Hong Kong. The Department of Justice is also stepping up the promotion of legal and dispute resolution services of Hong Kong in emerging economies in the Asia Pacific region.

We have our usual columns "Judgment Update" and "LegCo President's Decision on Member's Bill". In the "Judgment Update" column, there are summaries of two CFA and two CA judgments concerning the following matters:

- Whether the operation of section 30A(10)(a) of the Bankruptcy Ordinance (Cap. 6) which provides that, where a bankrupt has left Hong Kong before the commencement of the bankruptcy, the relevant period for an automatic discharge shall not start to run until he returns to Hong Kong and notifies the trustee in bankruptcy of his return,

amounts to an infringement of "the right to travel" conferred by BL 31 and Article 8(2) of the BoR.

- The constitutionality of section 21(1)(a) of the Import and Export Ordinance (Cap. 60) insofar as it allowed entry into premises without a warrant. In particular, whether the restriction of the right to privacy in BL 29 and Article 14 of the BoR is manifestly disproportionate and the legislative provision in question can become BL-compliant by remedial interpretation; whether in providing information to the Mainland Customs, the purpose of furthering Commissioner of Customs and Excise's own investigation far outweighed the impermissible purpose.
- Whether public interest as an important consideration to be taken into account by the CE in C in exercising the discretion under section 10(1) of the Broadcasting Ordinance (Cap. 562) on whether or not to grant a domestic free television programme service licence was legally certain enough to satisfy the constitutional requirement of being "prescribed by law".
- Whether BL 6 and BL 105 are engaged where landowners complain about planning restrictions imposed by the Town Planning Board on the use of their land and, if so, must the restrictions be subjected to a proportionality analysis. Further, what standards or tests should the Court apply in conducting a proportionality assessment in such a case.

The column "LegCo President's Decisions on Member's Bill" covers a recent decision on members' bills concerning the Bank of Communications (Hong Kong) Limited (Merger) Bill 2015.

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