

# BASIC LAW BULLETIN

## Editor's Note

In the "Focus" section of this issue, we discuss how the "One Country, Two Systems" policy as constitutionally guaranteed under the Basic Law has facilitated the development of the status of Hong Kong as an international commercial, financial and shipping centre. In line with the principle of "high degree of autonomy", it is expressly provided under BL 13(3) that the CPG "authorizes the HKSAR to conduct relevant external affairs on its own in accordance with [the Basic] Law". Chapter VII of the Basic Law deals with external affairs. Under BL 151, the HKSAR is specifically authorized to conclude and implement agreements with foreign states and regions and relevant international organizations in the appropriate fields. As such, the HKSAR is uniquely positioned to participate in the Belt and Road Initiative which will open up immense business opportunities. We also discuss the prospect that the HKSAR will have a pivotal role to play in providing the requisite international legal and dispute resolution services when Mainland enterprises "go global" and pursue the Belt and Road Initiative.

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 four court decisions (two by the CFA, one by the CA and a determination of the Appeal Committee of the CFA) concerning the following matters:

- Whether BL 33 confers a general right to work; and whether it is engaged by the restriction in para. 23 of the Code of Conduct of the Hong Kong Bar Council insofar as it prevented a barrister from engaging in any supplementary occupation without the Council's prior permission.
- Whether s. 63B of the District Court Ordinance, Cap. 336, which provides that the CA's decision on refusal of leave to appeal to itself is final, was inconsistent with BL 82, which provides for the vesting of the power of final adjudication in the CFA; and whether any rule which permitted any case to be screened out as unfit for appeal by an intermediate court would constitute a disproportionate restriction on the CFA's power of final adjudication.
- Whether the right to stand for election contained in BL 26 and Article 21 of the BoR has been infringed by the restriction contained in s. 39(2A) of the Legislative Council Ordinance, Cap. 542 which in effect provides that a member of the LegCo who has resigned is disqualified from being nominated as a candidate at a by-election consequent on that member's resignation.
- The scope of the principle of judicial non-intervention in the internal affairs of LegCo; the ambit and effect of the NPCSC Interpretation on BL 104 and whether s. 21 of the Oaths and Declarations Ordinance, Cap. 11 and s. 73 of the Legislative Council Ordinance, Cap. 542 should be construed as requiring a member of LegCo who declines or neglects to take the LegCo oath to vacate his office automatically by operation of law.

The column "LegCo President's Decision on Member's Bill" covers a recent decision on Member's Bill concerning the Bank of Communications (Hong Kong) Limited (Merger) Bill 2017.

## Contents

Editor's Note  
P1

The Focus  
P3

Judgment Update  
P11

LegCo President's Decision on Member's Bill  
P34

This publication is edited by the Legal Policy Division of the Department of Justice. It is published jointly by the Department of Justice, the Civil Service Bureau and the Constitutional and Mainland Affairs Bureau for the general reference of primarily the Civil Service and is not intended to provide professional advice on any particular matter or to form the basis of any decision as to a particular course of action. While every effort has been made to ensure accuracy, no responsibility can be accepted by the Department of Justice, the Civil Service Bureau or the Constitutional and Mainland Affairs Bureau for errors and omissions however caused.



Department of Justice



Civil Service Bureau



Constitutional and  
Mainland Affairs  
Bureau



基本法推廣督導委員會  
Basic Law Promotion  
Steering Committee

This publication is published in support of the work of the Basic Law Promotion Steering Committee