

BASIC LAW BULLETIN

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Editor's Note

In the "Focus" section of this issue, we discuss how the HKSAR's high degree of autonomy in the conduct of its economy, as enshrined in Chapter V of the Basic Law, has enabled the city to thrive as an international business and financial centre and to be the world's freest economy. Chapter V of the Basic Law embeds various important economic policies underlying the HKSAR's successful capitalist economy. In line with the principle of "one country, two systems", Chapter V of the Basic Law enables Hong Kong to practise an independent taxation system, to maintain a low tax regime (BL 108) and to have independent finances separate from the rest of China (BL 106). Chapter V gives the HKSARG the mandate to provide an appropriate economic and legal environment for the maintenance of Hong Kong's status as an international financial centre (BL 109). The HKSARG enjoys a high degree of autonomy to formulate, on its own, monetary and financial policies for Hong Kong (BL 110). The Basic Law gives Hong Kong the mandate to maintain its own currency (BL 111), to be a free port (BL 114) and to pursue free trade policy (BL 115). Chapter V ensures that the HKSAR will maintain a favourable legal infrastructure for businesses large and small. The HKSAR's unprecedented high degree of autonomy under Chapter V of the Basic Law makes Hong Kong the supreme gateway for both local and foreign businesses to tap into the vast market of Mainland China.

In the "Judgment Update" column, there are summaries of four recent judgments of the CFA concerning the following matters:

- Whether the enactment of s. 11 of the Administrative Instructions for Regulating Admittance and Conduct of Persons, Cap. 382A ("AI") pursuant to s. 20(b) of the Legislative Council (Powers and Privileges) Ordinance, Cap. 382 ("LCPPPO") was inconsistent with the principle of freedom of speech guaranteed by BL 27; whether the "non-intervention" principle was applicable; whether AI s. 11 could meet the "prescribed by law" requirement and whether AI s. 12 was unjustifiably wide to constitute a "blanket prohibition".
- Whether the Appellant could rely on BL 78, which provides that members of the LegCo of the HKSAR shall not be subject to arrest when attending or on their way to a meeting of the Council, to argue that the presence of police officers in LegCo's precincts was inconsistent with the constitutional safeguard of immunity from arrest created under the article; and whether a police officer who enters the precincts of the Chamber as defined in s. 2 of the LC(PP)O but without an authority under s. 8(2) or (3) of the LC(PP)O, is a police officer "on duty within the precincts of the Chamber" and so an "officer of the Council" within the meaning of s. 2 of the LC(PP)O.
- Whether the application of sentencing guideline laid down by the CA should be subject to the constitutionally protected right against double jeopardy as provided by Article 11(6) of the BoR that no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of Hong Kong; and the extent to which the magistrate should have taken into account the motives of the Appellants in committing the offences where it was asserted that the offences were committed as acts of civil disobedience and in the exercise of the constitutional right to freedom of expression and freedom of assembly under BL 27.
- Whether an offence contrary to s. 122(1) and (2) of the Crimes Ordinance, Cap. 200, taken together is an offence of absolute liability when the alleged victim is a person under 16 years of age; whether an accused charged under s. 122(1) with indecently assaulting a person who was under 16 years of age could legally put forward a defence that the person in fact consented and the accused genuinely believed that he/she was 16 years of age or over; and whether in a prosecution under s. 122(1) where the alleged victim is a person under 16 years of age, the prosecution is required to prove absence of genuine belief on the part of the accused that the person was 16 years of age or over.

In "Sidelights", there is an updated list of members of the Committee for the Basic Law of the HKSAR under the NPCSC.

In "Corrigendum", there is an amendment of Basic Law Bulletin Issue No. 19.

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