



SUBMISSION ON THE WHITE PAPER ON THE PRACTICE OF “ONE COUNTRY, TWO SYSTEMS” POLICY IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION

On 10 June 2014, the State Council of the People's Republic of China issued a White Paper titled “THE PRACTICE OF ‘ONE COUNTRY, TWO SYSTEMS’ POLICY IN THE HONG KONG SPECIAL ADMINISTRATIVE REGION” (“White Paper”).

The Law Society has considered the above document, and wishes to respond to the themes in the White Paper on (i) the role of the Judiciary of the HKSAR and (ii) the interpretation of Basic Law by the Standing Committee of the National People’s Congress (“NPCSC”).

Role of the Judiciary

Division 3 of Part V of the White Paper says that (with emphasis supplied),

“under the policy of "one country, two systems", all those who *administrate* Hong Kong, including the chief executive, principal officials, members of the Executive Council and Legislative Council, *judges of the courts at different levels and other judicial personnel*, have on their shoulders the responsibility of correctly understanding and implementing the Basic Law, of safeguarding the country's sovereignty, security and development interests, and of ensuring the long-term prosperity and stability of Hong Kong. In a word, loving the country is the basic political requirement for Hong Kong's administrators. If they are not consisted of patriots as the mainstay or they cannot be loyal to the country and the HKSAR, the practice of ‘one country, two systems’ in the HKSAR will deviate from its right direction, making it difficult to uphold the country's sovereignty, security and development interests, and putting Hong Kong's stability and prosperity and the wellbeing of its people in serious jeopardy.”

The Law Society states that:

1. Various bodies and persons have been approaching the above excerpts of the White Paper in a different manner. To the extent that the above excerpts might be read by somebody as causing concerns on the independence of the judiciary, the Law Society reiterates unambiguously that the rule of law and judicial independence are essential for maintaining the principle of “One Country, Two Systems”, as well as the stability and prosperity of Hong Kong.
2. The rule of law and the independence of the judiciary are indispensable and sacrosanct foundations for the Hong Kong legal system.
3. The Law Society fully supports what the Chief Justice has stated in the Ceremonial Opening of the Legal Year 2014 on the importance of having an independent judiciary. His Lordship said, among other things, that

“The Basic Law sets out clearly the principle of the separation of powers between the legislature, the executive and the judiciary, and in quite specific terms, the different roles of the three institutions. So far as the Judiciary is concerned, the ambit of its constitutional role is the exercise of judicial power, that is, the adjudication of disputes that come before the courts in accordance with the law.”
4. The Law Society notes that the executive, the legislature and the judiciary are the three components of a government. Article 85 of the Basic Law clearly provides for an independent judiciary:

“The courts of the Hong Kong Special Administrative Region shall exercise judicial power independently, *free from any interference.*” [emphasis added]
5. The Law Society welcomes the Secretary for Justice’s assurance in his reply to the media inquiry on 11 June 2014 that judges are not regarded as part of the executive authorities. The Law Society expects the government to continue to uphold this principle in the future.

Interpretation of Basic Law

On the interpretation of Basic Law by NPCSC (Division 2 Part V), the Law Society’s position has always been that too many interpretations of the Basic Law by the NPCSC can undermine the independence of the judiciary and the rule of law.

The Law Society wishes to make it clear that, by responding to only the above two themes, the Law Society is not selectively critical on the White Paper insofar as its comments on the two issues are concerned. The White Paper must be read as a whole.

The Law Society hopes that with the release of this Statement, an unequivocal message is sent on the importance that the solicitors' branch of Hong Kong legal profession attaches to the above fundamental issues.

The Law Society of Hong Kong
25 June 2014