

Common law and judicial independence bedrocks of Hong Kong's success

In response to media enquiries, a Government spokesman today (September 19) emphasised the importance of upholding the common law system and judicial independence in Hong Kong.

"Article 2 of the Basic Law clearly states that the Hong Kong Special Administrative Region (HKSAR) enjoys independent judicial power, including that of final adjudication while Article 8 stipulates that the common law system shall be maintained. This is our unique strength and advantage and is often cited by international business as a major factor for their continued presence and success in Hong Kong. Nobody should doubt the HKSAR Government's commitment to the rule of law and judicial independence," the spokesman said.

"The Basic Law provides for the political structure of the HKSAR, which is an executive-led system. At the same time, the Basic Law upholds judicial independence. Under Article 85, the courts of the HKSAR shall exercise judicial power independently, free from any interference. Members of the judiciary shall be immune from legal action in the performance of their judicial functions.

"Article 82 of the Basic Law provides that the power of final adjudication of the HKSAR shall be vested in the Court of Final Appeal of the Region, which may as required invite judges from other common law jurisdictions to sit on the Court of Final Appeal (CFA). Since 1997, eminent jurists from other common law jurisdictions have been appointed to the CFA as overseas non-permanent judges. Currently, there are 13 overseas non-permanent judges.

"The fact that these eminent judges sit on the CFA testifies to Hong Kong's judicial independence, helps maintain a high degree of confidence in our legal system, and allows Hong Kong to maintain strong links with other common law jurisdictions.

"The Chief Executive has on many occasions appreciated the valuable contribution of these eminent jurists on the CFA to jurisprudence in Hong Kong. The appointment of judges from other common law jurisdictions has served us well and will continue," the spokesman added.

In relation to the resignation of Mr Justice Spigelman from the CFA on September 2, the Chief Executive's Office said that Mr Justice Spigelman did not give any reason for his resignation.

Under section 14(5) of the Court of Final Appeal Ordinance (Cap.484), a non-permanent judge of the Court of Final Appeal may at any time resign his office by notice in writing addressed to the Chief Executive. No consultation or approval process is necessary. Following established practice, the Chief

Executive as the appointment authority revoked the relevant appointment by exercising the power under section 42 of the Interpretation and General Clauses Ordinance (Cap.1) and gazetted the revocation.

The spokesman stressed that there could be no question of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the "National Security Law") affecting Hong Kong's judicial independence and the smooth operation of the judicial system, including the CFA.

"Article 5 of the National Security Law clearly stipulates that the principle of the rule of law shall be adhered to in preventing, suppressing and imposing punishment for offences endangering national security. Important principles of the rule of law are embodied in the National Security Law. They include:

- Conviction and sentencing of crimes should be well defined in the law: a person who commits an act which constitutes an offence under the law shall be convicted and punished in accordance with the law. No one shall be convicted and punished for an act which does not constitute an offence under the law.
- Presumption of innocence: a person is presumed innocent until convicted by a judicial body.
- Non bis in idem: no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in judicial proceedings.
- Right to a fair trial: the right to defend himself or herself and other rights in judicial proceedings that a criminal suspect, defendant and other parties in judicial proceedings are entitled to under the law shall be protected.
- Non-retrospectivity: the National Security Law applies only to acts after its commencement.

"The HKSAR shall assume primary responsibility for safeguarding national security in the Region. Except under the exceptional circumstances specified, the HKSAR shall have jurisdiction over cases concerning offences under the National Security Law."