

Statement of the Hong Kong Bar Association
on the Speech of Director Zhang Xiaoming
at the Seminar held on 12 September 2015 marking the 25th Anniversary
of the Promulgation of the
Basic Law of the Hong Kong Special Administrative Region

1. The Hong Kong Bar Association (“HKBA”) expresses its deep concerns over recent discussions relating to the contents of the speech given by Mr. Zhang Xiaoming (“Mr. Zhang”), Director of the Liaison Office of the Central People’s Government in the Hong Kong SAR, at the Seminar on the 25th Anniversary of the Promulgation of the Basic Law of the HKSAR held on 12 September 2015.
2. The theme of Mr. Zhang’s speech was the special features of the political system of the Hong Kong SAR. Although Mr. Zhang in his description of the Hong Kong SAR’s political system acknowledged and confirmed that judicial independence is fully protected under the Basic Law, other parts of his speech on the relationship between the Executive, the Legislature and the Judiciary has inevitably caused public concerns over the Rule of Law in Hong Kong.
3. Mr. Zhang stated in his speech that the political system of “Separation of the Three Powers” was generally established on the foundation of a sovereign state of complete authority. According to Mr. Zhang, such a political system is at best a point of reference for the Hong Kong SAR and cannot be applied to the Hong Kong SAR in its entirety.

4. In this regard, the HKBA is deeply concerned that the above statement in Mr. Zhang's speech on the *political system* may be interpreted by some quarters of the public as rejecting the applicability of "separation of powers" under the legal framework of the Hong Kong SAR. On this issue, the HKBA must emphatically point out that **the relationship between the Executive, the Legislature and the Judiciary in the Hong Kong SAR and their respective powers and duties are all clearly defined and stipulated in the Basic Law.** The superior courts of the Hong Kong SAR (including the Court of Final Appeal) have repeatedly affirmed that in construing and applying the provisions of the Basic Law in the adjudication of cases, the Hong Kong SAR courts will apply the principles and doctrines embedded in common law, including the doctrine of "separation of powers". Accordingly, the HKBA firmly believes that **the common law principle of "separation of powers" will continue to be implemented within the constitutional framework of the Basic Law.**

5. In addition, Mr. Zhang, in his discussion of the core position of the Chief Executive in the political system of the Hong Kong SAR, suggested that the Chief Executive's capacity as a "double leader" with "double accountability" gives him "*a special legal status that transcends the institutions of the Executive, the Legislature and the Judiciary, placing him at the core position in the operation of the powers of the SAR, performing a pivotal role as a link between the Central Government above him and the three powers of the SAR under him*".

6. In this connection, the HKBA must reiterate one fundamental principle — the Chief Executive’s office, powers and functions are all provided for and governed by the relevant provisions of the Basic Law. The Chief Executive also has other powers and functions vested in his office by Hong Kong SAR legislation. The Chief Executive, like any public officer, must perform his functions or exercise his powers lawfully and in accordance with the relevant legal provisions. Acts of the Chief Executive in the performance of his duties may be the subject of judicial review by the Hong Kong SAR courts as a means of balance of power. **In short, irrespective of the description of the political role played by the Chief Executive the Hong Kong SAR, under the constitutional framework of the Basic Law he cannot be said to be above the law.**

7. The HKBA believes that Mr. Zhang fully understands the above basic principles. However, **his description of the Chief Executive as having “*a special legal status that transcends the institutions of the Executive, the Legislature and the Judiciary*” would inevitably be taken by some as putting the Chief Executive in a position *superior to the “three powers”*, therefore provoking considerable anxiety amongst the public. The HKBA considers these developments regrettable. If the original intention of Mr. Zhang was to summarize the constitutional powers and duties of the Chief Executive provided for in the Basic Law and to confirm his roles, powers and duties vis-à-vis the Central People’s Government, the Executive, the Legislature and the Judiciary of the Hong Kong SAR, **the HKBA would urge Mr. Zhang and the Secretary for****

Justice to clarify the position as soon as possible in order to rectify any misconceptions caused by the statements, and to eliminate any unnecessary concerns and doubts that citizens of Hong Kong SAR and the international community may have in relation to the implementation of the Rule of Law under “One Country, Two Systems”.

8. Lastly, the HKBA stresses in the strongest possible terms that the Rule of Law of the Hong Kong SAR, as widely recognized by the international community, is dependent upon a Judiciary that is fully independent, i.e. all judicial officers in discharging their judicial duties are fully and truly independent from the Executive and the Chief Executive, and free from all external interference. Even in relation to the mechanism of recommending and appointing judicial officers in which powers are vested in the Chief Executive, the exercise of such powers have always been strictly subject to the principle of judicial independence. **Since the Handover, this core value has been fully upheld and protected under the Basic Law. Hence, the confidence of Hong Kong citizens and the international community in the Rule of Law and judicial independence in the Hong Kong SAR should not be easily undermined by any political commentary.**

Dated 14 September 2015.

HONG KONG BAR ASSOCIATION