

For Reference Only

Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress

Adopted by the Standing Committee of the Eleventh National People's Congress at Its 22nd Session on 26 August 2011

The Standing Committee of the Eleventh National People's Congress examined at its Twenty-second Session the motion regarding the request for examination of *The Draft Interpretation of Paragraph 1, Article 13 and Article 19 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Standing Committee of the National People's Congress* submitted by the Council of Chairmen. The motion of the Council of Chairmen was submitted upon the report by the Court of Final Appeal of the Hong Kong Special Administrative Region requesting the Standing Committee of the National People's Congress to interpret the relevant provisions of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, in accordance with the provisions of Paragraph 3, Article 158 of the *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*.

The Court of Final Appeal of the Hong Kong Special Administrative Region needs to ascertain, in adjudicating a case involving the Democratic Republic of the Congo, whether the Hong Kong Special Administrative Region should apply the rules or policies on state immunity as determined by the Central People's Government. For this purpose, in accordance with the provisions of Paragraph 3, Article 158 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the Court of Final Appeal of the Hong Kong Special Administrative Region, seeks an interpretation from the Standing Committee of the National People's Congress on the following questions: "(1) whether on the true interpretation of Paragraph 1, Article 13, the Central People's

Government has the power to determine the rule or policy of the People's Republic of China on state immunity;(2)if so, whether, on the true interpretation of Paragraph 1, Article 13 and Article 19, the Hong Kong Special Administrative Region(HKSAR), including the courts of the HKSAR: ① is bound to apply or give effect to the rule or policy on state immunity determined by the Central People's Government under Paragraph 1, Article 13; or ② on the other hand, is at liberty to depart from the rule or policy on state immunity determined by the Central People's Government under Paragraph 1, Article 13 and to adopt a different rule;(3)whether the determination by the Central People's Government as to the rule or policy on state immunity falls within 'acts of state such as defence and foreign affairs' in the first sentence of Paragraph 3, Article 19 of the Basic Law; and(4) whether, upon the establishment of the HKSAR, the effect of Paragraph 1, Article 13, Article 19 and the status of Hong Kong as a Special Administrative Region of the People's Republic of China upon the common law on state immunity previously in force in Hong Kong(that is, before 1 July 1997), to the extent that such common law was inconsistent with the rule or policy on state immunity as determined by the Central People's Government pursuant to Paragraph 1, Article 13, was to require such common law to be applied subject to such modifications, adaptations, limitations or exceptions as were necessary to ensure that such common law is consistent with the rule or policy on state immunity as determined by the Central People's Government, in accordance with Articles 8 and 160 of *the Basic Law* and the *Decision of the Standing Committee of the National People's Congress* dated 23 February 1997 made pursuant to Article 160." The above request for interpretation by the Court of Final Appeal of the Hong Kong Special Administrative Region complies with the provisions of Paragraph 3, Article 158 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*.

In accordance with Subparagraph(4), Article 67 of the Constitution of the People's Republic of China and Article 158 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*,

and after consulting the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress, in relation to the request for interpretation by the Court of Final Appeal of the Hong Kong Special Administrative Region, hereby makes the following interpretation of the provisions of Paragraph 1, Article 13 and Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and related issues:

1. On question (1) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. According to Subparagraph (9), Article 89 of *the Constitution of the People's Republic of China*, the State Council as the Central People's Government exercises the function and power to conduct the foreign affairs of the State; as the rules or policies on state immunity fall within diplomatic affairs in the realm of the foreign affairs of the state, the Central People's Government has the power to determine the rules or policies of the People's Republic of China on state immunity to be given effect to uniformly in the territory of the People's Republic of China. Based on the above, in accordance with the provisions of Paragraph 1, Article 13 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* that “[t]he Central People's Government shall be responsible for the foreign affairs relating to the Hong Kong Special Administrative Region”, the conduct of the foreign affairs relating to the Hong Kong Special Administrative Region falls within the power of the Central People's Government. The Central People's Government has the power to determine the rules or policies on state immunity to be applied in the Hong Kong Special Administrative Region.

2. On question (2) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. According to the provisions of Paragraph 1, Article 13 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and Article 1 of this Interpretation, the Central People's

Government has the power to determine the rules or policies on state immunity to be applied in the Hong Kong Special Administrative Region. According to the provisions of Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* and Article 3 of this Interpretation, the courts of the Hong Kong Special Administrative Region have no jurisdiction over the act of the Central People's Government in determining the rules or policies on state immunity. Therefore, when questions of immunity from jurisdiction and immunity from execution of foreign states and their properties arise in the adjudication of cases, the courts of the Hong Kong Special Administrative Region must apply and give effect to the rules or policies on state immunity determined by the Central People's Government as being applicable to the Hong Kong Special Administrative Region. Based on the above, in accordance with the provisions of Paragraph 1, Article 13 and Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the Hong Kong Special Administrative Region, including the courts of the Hong Kong Special Administrative Region, is under a duty to apply or give effect to the rules or policies on state immunity that the Central People's Government has determined, and must not depart from the abovementioned rules or policies nor adopt a rule that is inconsistent with the abovementioned rules or policies.

3. On question (3) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. State immunity concerns whether the courts of a state have jurisdiction over foreign states and their properties and whether foreign states and their properties enjoy immunity in the courts of a state. It directly relates to the state's foreign relations and international rights and obligations. Therefore, the determination as to the rules or policies on state immunity is an act of state involving foreign affairs. Based on the above, "acts of state such as defence and foreign affairs" as stipulated in Paragraph 3, Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China* includes the act of determination by the Central People's Government as to the rules or policies on state immunity.

4. On question (4) on which an interpretation is sought by the Court of Final Appeal of the Hong Kong Special Administrative Region. According to the provisions of Articles 8 and 160 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, the laws previously in force in Hong Kong shall be maintained only if there is no contravention of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*. In accordance with the provisions of Paragraph 4 of the *Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, such of the laws previously in force in Hong Kong which have been adopted as the laws of the Hong Kong Special Administrative Region shall, as from 1 July 1997, be applied subject to such modifications, adaptations, limitations or exceptions as are necessary so as to bring them into conformity with the status of Hong Kong after resumption by the People's Republic of China of the exercise of sovereignty over Hong Kong as well as to be in conformity with the relevant provisions of the Basic Law. The Hong Kong Special Administrative Region, as a local administrative region of the People's Republic of China that enjoys a high degree of autonomy and comes directly under the Central People's Government, must give effect to the rules or policies on state immunity as determined by the Central People's Government. The laws previously in force in Hong Kong relating to the rules on state immunity may continue to be applied after 1 July 1997 only if they comply with the above requirements. Based on the above, in accordance with the provisions of Paragraph 1, Article 13 and Article 19 of *the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China*, such of the laws previously in force in Hong Kong concerning the rules on state immunity which have been adopted as the laws of the Hong Kong Special Administrative Region according to the *Decision of the Standing Committee of the National People's Congress on Treatment of the Laws Previously in Force in Hong Kong in accordance with Article 160 of the Basic Law of the Hong Kong Special Administrative*

***Region of the People's Republic of China*, when applied as from 1 July 1997, must be subject to such modifications, adaptations, limitations or exceptions as are necessary so as to be consistent with the rules or policies on state immunity that the Central People's Government has determined.**

The Interpretation is hereby announced.