



MIDDLE TEMPLE  
AMITY VISIT TO HONG KONG

24 — 26 SEPTEMBER 2015

PROGRAMME

## FOREWORD BY MASTER TREASURER

Hong Kong is one of the most successful, and also one of the most fascinating, cities in the world. The inter-weaving of the colonial, Chinese and capitalist cultures is unique.

Our visit coincides with the opening by the Chief Justice of a new building for the Court of Final Appeal, and a special judicial colloquium for senior commonwealth judges.

The last Amity visit by Middle Temple was in 2003, led by Master Treasurer Arlidge. Some of those attending this year will have personal memories of that successful venture.

The main aims in 2015 will be threefold. First, to strengthen our links with our own alumni in Hong Kong, who will be looking forward to renewing and forming new acquaintances with their Inn of Court. Second, to enjoy, in the company of many of the finest lawyers and judges in Hong Kong, an interesting and exciting programme of discussions and meetings. And last but not least, to show our support for the rule of law, and for the profession of advocacy, in a part of the world to which we owe much, and which still acknowledges strongly its ties with us.

I thank everyone who will be coming with us, and all those who have played, and will play, a part in the arrangements, especially the Chief Justice himself, the Hon Geoffrey Ma (a member of Gray's Inn), our Consul General, Master Caroline Wilson, Master John Scott SC, and my esteemed predecessor as Master Treasurer, and co-leader of this visit, Master Igor Judge.

I know that for Liz and myself this will be a high-light of the year, and it will I hope also represent a memorable step in the development of the international influence of the Middle Temple.

**Stephen Hockman QC**  
**Master Treasurer 2015**

## THE MIDDLE TEMPLE SOCIETY IN HONG KONG

The Society has been in existence since the 1980s. Master Dennis Barker was Chairman. It's aim is to foster a collegiate spirit between members of the Bar and Judiciary in Hong Kong and strengthening the links with the Middle Temple in London.

The Society thrived and continued to grow under the Chairmanship of Master Barry Mortimer until 1998 when Master John Griffiths (formerly Attorney General of Hong Kong) took over and then, with Master John Scott and others, the Society was formalised in 2002 with the introduction of a constitution.

Membership of the Society is not confined to those who have been called to the Bar by the Middle Temple in London but is open to all members of the Hong Kong Bar.

One of the important ways in which the Society serves the Bar in Hong Kong is the awarding of scholarships as a means to encourage and assist with the further education of pupils and young barristers. From its resources the Society sends six barristers per year from Hong Kong to London to receive training in advocacy provided by the Middle Temple. This is complemented by a scheme under which an annual scholarship is awarded to young Middle Templars to come from London to Hong Kong to serve two weeks' mini-pupillage and spend two weeks placed in an international law firm or as a Judge's marshal. The Society and the Inn owe their gratitude to Master John Griffiths for this innovation.

The Society thrives and currently has an active membership of over 250 and meets informally on a regular basis. The current (2015) office holders are:

**Chairman:** The Honourable Mr Justice Bokhary NPJ  
**Vice-Chairman:** John Scott SC QC  
**Secretaries:** Graham Harris SC and Catrina Lam  
**Treasurer:** Melvin Wong

For further information on the Middle Temple Society in Hong Kong please contact Catrina Lam at Des Voeux Chambers ([catrinalam@dvc.com.hk](mailto:catrinalam@dvc.com.hk)).

## BRIEFING ON HONG KONG

The following pages have kindly been sent to the Inn by HM Consul General in Hong Kong, Master Caroline Wilson.

Members joining the trip may wish to read the following for further background information:

**1) The Foreign Secretary's 6 Monthly Report to Parliament on Hong Kong:**

<https://www.gov.uk/government/world-location-news/six-monthly-report-to-parliament-on-hong-kong-january-june-2015>

**2) The House of Lords' debate on Hong Kong at:**

<http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141016-0002.htm>  
- (although October 2014 it still provides valuable insights)

**3) The Foreign Affairs Committee report:**

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/inquiries1/parliament-2010/hong-kong/>

**4) HMG statement on the (failed ) vote on constitutional reform. Government Response (and FAC response to that):**

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/news/hong-kong-govt-response/>

**5) UK statement on reform vote**

<https://www.gov.uk/government/news/uk-response-to-hong-kong-vote-on-electoral-reform>

## BRIEFING ON HONG KONG

### **HONG KONG POLITICAL BRIEF**

#### **BCG Hong Kong, July 2015**

##### **Current situation**

On 18 June, the Legislative Council voted down Government proposals to implement universal suffrage for Chief Executive elections in 2017. The vote brought an end to a contentious twenty month electoral reform process which saw an unprecedented protracted period of civil disobedience. The Hong Kong Special Administrative Region Government has said it will now turn its attention to “livelihood” issues before district elections later this year. It is not clear when the constitutional reform process will be restarted.

##### **The Executive and Legislature**

On 25 March 2012, Mr C Y Leung was selected by a 1,200 member Election Committee as Chief Executive (CE) of the Hong Kong Special Administrative Region Government (HKSARG) for a five-year term. He is the third CE since handover in 1997. He is supported by an Executive Committee (ExCo) which comprises fourteen ex-officio members, representing a range of political opinion, the Chief Secretary for Administration and the fourteen heads of the Government bureaux (equivalents to Departments of State).

The Legislative Council (LegCo) is Hong Kong’s parliament. Forty of its seventy seats are directly elected. The remaining thirty seats are filled by representatives of “functional constituencies”, selected mainly by the business sector and the professions.

Parties who stand on a pro-democracy platform - “pan-democrats” - have consistently secured between 50% and 60% of the popular vote since handover. The twenty seven pan-democratic legislators represent nine political parties and organisations. A majority (forty-three) of seats in the LegCo are held by representatives of “pro-government” or “pro-Beijing” parties and groups.

##### **Governance**

Under the Basic Law, the Chief Executive may not be a member of a political party and has no popular mandate. The pace of legislative change is slow as a result of strained relations between the Executive and Legislature. In recent years filibustering became a feature of LegCo business, escalating during the current legislative term into a concerted campaign of non co-operation by the 27 pan-democratic legislators. This has resulted in significant disruption to the Government’s legislative and capital works programmes with spending significantly down on the last legislative term.

##### **Hong Kong Constitutional Framework**

The Basic Law is Hong Kong’s constitution. It enshrines the provisions of the Sino-British Joint Declaration including the “One Country, Two Systems” model under which Hong Kong enjoys a high degree of autonomy and maintains a capitalist system, a common law system and rights and freedoms including freedom of expression, of the press, of association and of demonstration.

## BRIEFING ON HONG KONG

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The Basic Law establishes as an ‘ultimate aim’ the election of the Chief Executive and all members of the LegCo by universal suffrage. In 2007, the National People’s Congress Standing Committee (NPCSC) decided that Hong Kong’s Chief Executive could be elected by universal suffrage in 2017; and that LegCo could be elected by universal suffrage thereafter (effectively 2020).

#### **Constitutional reform**

On June 18, LegCo voted on the HKSARG’s proposal for implementing universal suffrage for the 2017 election of the CE. The proposal was rejected by legislators with pan-dems voting against the proposal which they argued would not offer voters a genuine choice.

The vote was the culmination of a lengthy electoral reform process that began with a public consultation in December 2013. On 31 August 2014 the NPCSC issued a Decision set out the parameters for the electoral system for CE elections. The Decision, which many viewed as overly restrictive, acted as a catalyst for an unprecedented period of civil disobedience. Protests came to an end after 79 days on 15 December. The HKSARG conducted a second round of constitutional reform in January, before publishing proposals in April.

As a result of the failure of the reform process the 2017 elections will be conducted under the existing system, with the CE selected by a 1,200 member committee. It is not clear when the constitutional reform process will be restarted. However, some have argued that improvements could be made to the systems for the election of the CE and the election of LegCo under local legislation in the interim.

The HKSARG has said that it will now shift its focus to “livelihood issues” for the rest of its term which will also see territory wide District Council elections (November 2015) and LegCo elections (October 2016).

#### **Hong Kong society**

Many commentators argue that the constitutional reform process has deepened existing societal fissures, leaving Hong Kong more polarised than ever before. In recent months “localist” or “nativist” groups who protest against increasing Mainland influence have gained increasing prominence, though they are still considered a radical fringe group.

#### **One country two systems**

Since 1997, HMG has published a Report to Parliament on the Implementation of the Sino–British Joint Declaration every six months. The most recent report (published in January 2014) concluded that overall ‘One Country, Two Systems’ continues to work well, while highlighting areas of concern – particularly press freedom. The next report, covering the period July – December 2013, is due to be published in on 21 July.

SCMP 679/205

POLITICS

# Lawyers demand clarity on separation of powers

## Bar Association takes top Beijing official to task for saying chief executive has overriding control

Stuart Lau  
stuart.lau@scmp.com

The Bar Association attacked Beijing's top official in Hong Kong for saying separation of powers as prescribed under the Basic Law did not apply in the city.

It urged Zhang Xiaoming (張曉明), director of the central government's liaison office, to explain his remarks last week that the chief executive "possesses a special legal position that transcends the executive, the legislature and the judiciary", and that the separation of powers applied only to sovereign states.

The barristers' body said it also wanted Secretary for Justice Rimsky Yuen Kwok-keung to respond and that it was "deeply concerned" the speech would be interpreted as a rejection of the principle in Hong Kong.

"The [Bar Association] firmly believes that the common law principle of 'separation of powers' will continue to be implemented within the constitutional framework of the Basic Law," it said in a statement.

Zhang has been accused of provoking the public after a relatively calm period since the

Occupy protests ended. He said that as the chief executive was not just the top official in Hong Kong but also answerable to Beijing, the city's leader had a status above the three branches.

The association said it would be "regrettable" should this view be taken as meaning that the chief executive was superior to the three institutions.

The chief executive, it argued, "cannot be said to be above the law ... irrespective of the description of the political role".

The association called on Zhang and Yuen to "clarify the position as soon as possible" to

rectify misconceptions and eliminate unnecessary doubts among Hongkongers and the international community.

Yuen stressed earlier that the Basic Law guaranteed judicial and legislative supervision of the chief executive.

"Some media or interviewees said [the chief executive] could become a local king - this is absolutely impossible," Yuen said.

He urged the public not to read Zhang's words "out of context", but he did not say whether or not the separation of powers was effective in the city.

Civic Party leader Alan Leong Kah-kit called on Zhang to explain his remarks because comments from Yuen could at best serve as second-guessing.

"Zhang might just want to provoke Hong Kong into reacting more radically and violently given anticipation of controversy in his speech," Leong said.

Alan Hoo, chairman of the Basic Law Institute and convenor of the Liberal Party's constitutional affairs committee, said Zhang had pointed out the reality of the chief executive's status.

"The chief executive has a collective responsibility to account to the central government for the work of all three branches of government," Hoo said.



Rimsky Yuen said supervision of chief executive is guaranteed.

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LETTER OF THE LAW  
SIMON T.M. NG

SCMP 15/9/15

## Timeless symbol of our most cherished legal ideals

The Court of Final Appeal has moved back to the former Legislative Council building on Jackson Road, complete with new logo. Its homecoming, so rich with meaning, has delighted the Chief Justice.

What does the building's history say to us? Is history still relevant?

The building was purpose-built as the Supreme Court of the Hong Kong colony and was one of the buildings in Royal Statue Square symbolising British imperial rule.

The foundation stone was laid in 1903 and it was formally opened in 1912 by Sir Frederick Lugard, the governor of Hong Kong, who made a statement about law, justice and architecture.

"Our courts of justice shall

always surpass all other structures in durability, firm set on their foundations and built four-square to all the winds that blow, as an outward symbol perhaps of the justice which shall stand firm though the skies fall," he said.

The court building, designed by two prominent British architects, Sir Aston Webb (1849-1930) and E. Ingress Bell (1837-1914), is a magnificent two-storey granite structure that combines Greek, Roman, English and Chinese architectural elements and neo-classical style in an elegant way. Aston and Bell also designed the Victoria Law Courts in the English city of Birmingham (1896) and many other famous buildings.

Erected on one of the earliest pieces of reclaimed land in Hong

Kong, it was the first purpose-built British court building in the Far East. It was completed more than 20 years before the United States Supreme Court Building in Washington.

After the Supreme Court was removed to a modern, functional, multi-storey building at Queensway, Admiralty, in 1984, the building was used to house the Legislative Council, where it remained until the home of the legislature of the special administrative region moved to a new complex at Tamar.

The architecture of the building is rich in messages. It is an icon of Hong Kong's judicial independence, which has been practised for over a century and is preserved under the solemn pledge of "one country, two systems".

The blindfolded Themis standing right above the royal coat of arms is a visual reiteration of the centuries-old ideal of rule of law that even the sovereign must be subject to the law and reason. The administration of justice under

the dome has to live up to that spirit.

Over the years, the architecture has helped to shape public understanding and expectations of the legal system. Fairness and impartiality, as symbolised by Themis, are the legal values that people treasure most.

With the reoccupation by the Court of Final Appeal, the building will continue to convey the meaning of rule of law across time through its language of architecture, the practice of judicial independence, and the upholding of justice and equality.

Simon T.M. Ng is an assistant professor and senior programme director of law at the School of Professional and Continuing Education, University of Hong Kong.



The 103-year-old Court of Final Appeal building. Sam Tsang

**No one is above the law, says Hong Kong's top judge in surprise rebuke to leader CY Leung's defence of his 'transcendent' position**



Chief Justice Geoffrey Ma Tao's comments were made hours after Leung said the status of chief executive "is indeed transcendent". Photo: SCMP Pictures

Hong Kong's top judge today stressed that everyone is equal under the law in a surprise rebuke to Chief Executive Leung Chun-ying, as he defended for a second time contentious remarks by a top Beijing official over separation of powers.

Chief Justice Geoffrey Ma Tao-li emphasised that the city enjoys judicial independence in comments made hours after Leung said the status of chief

executive "is indeed transcendent", as the holder of the position and the principal officials nominated by him are appointed by Beijing.

Leung – for a second time in two days – backed Beijing's liaison office director Zhang Xiaoming, who said on Saturday the chief executive was in a "special legal position that transcends" the executive branch, legislature and the judiciary. Zhang also drew fire by adding the concept of separation of three powers was confined to sovereign states and could only serve as a reference for Hong Kong.

Ma said he was not going to comment on "things which have recently been said" or on other people's comments on what he said in the past.

"But I wish to emphasise two points, both in relation to the Basic Law. The first point is judicial independence. This is specified in the Basic Law in three separate places and I would ask people to read Articles 2, 19 and 85," Ma said.

"The second point deals with equality before the law, and this is article 25 of the Basic Law, which prescribes that everybody is equal before the law, without exception. This applies to everyone."

Article 25 of the Basic Law says "all Hong Kong residents shall be equal before the law."

Under Article 2, Beijing's legislature authorises Hong Kong "to exercise a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication".

Article 19 reiterates that Hong Kong "shall be vested with independent judicial power", while Article 85 states that Hong Kong's courts "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 FROM SOUTH CHINA MORNING POST — WEDNESDAY 16  
SEPTEMBER 2015

Ma declined to comment on the remarks of Basic Law Committee member and Beijing University legal scholar Rao Geping that some judges in Hong Kong could have misunderstood the idea of “separation of powers”.

Speaking ahead of a visit to Jakarta this morning, Leung reiterated that Hong Kong was not a sovereign state but a special administrative region with all its powers authorised by the central government.



“In the political structure of Hong Kong, the central government would only appoint the chief executive and the principal officials nominated by the chief executive,” Leung said. “Therefore, the status of chief executive is indeed transcendent.”

The Basic Law also stated clearly the executive branch was the chief executive, who would not only be the chief of government but also the special administrative region, he added.

“Actually this logic has been very distinct since the Basic Law was drafted some 20 years ago,” said Leung, adding society should accurately understand the articles of the city’s mini-constitution and its part in the political structure on the 25th anniversary of its promulgation.

Yesterday, Leung broke his silence by questioning the use of “separation of powers” to describe the city’s political structure, saying late leader Deng Xiaoping had suggested the city’s mini-constitution was not written to embody the principle.

The Bar Association had earlier argued otherwise, saying it “firmly believes” the common law principle would continue to be implemented within the city’s constitutional framework.

Today, James Tien Pei-chun, honorary chairman of the Liberal Party, said Hong Kong did practise separation of powers.

“The chief executive, for example, cannot override the Legislative Council. The bills proposed by the administration have to be approved by us,” Tien told a Commercial Radio show.

“His status may be transcendent, but his powers are not,” he added.

The lawmaker urged Zhang to clarify his remarks to clear doubts in society.

“Zhang read his speech carefully that day. It seemed to me it was pre-written by Beijing and he was only responsible for reading that out,” said Tien, a former deputy to the Chinese People’s Political Consultative Conference.

“Perhaps Beijing feels the hearts of Hongkongers are still not with the country, years since the [1997] handover. That’s why they are doing this to assert ‘one country’,” he said.



## USEFUL INFORMATION

### CONTACTS WHILST IN HONG KONG

**The Treasurer**, Stephen Hockman QC, will be arriving in Hong Kong on Tuesday evening (22 September) and will be staying at the Conrad in Pacific Place. He can be reached on his mobile +44 77775 894862 or by email [qc@shed31.demon.co.uk](mailto:qc@shed31.demon.co.uk)

**The Under Treasurer**, Guy Perricone, will be arriving in Hong Kong on Monday evening (21 September) and will be staying at the Conrad in Pacific Place. He can be reached on his mobiles +44 7950 833151 and +44 7786 961 157 or by email [g.perricone@middletemple.org.uk](mailto:g.perricone@middletemple.org.uk)

**The Director of Membership and Development**, Colin Davidson, will be arriving in Hong Kong on Tuesday evening (22 September) and will be staying at the Conrad in Pacific Place. He can be reached on his mobile +44 7950 833409 or by email [c.davidson@middletemple.org.uk](mailto:c.davidson@middletemple.org.uk)

### YOM KIPPUR

For those wishing to observe Yom Kippur, Nigel Kat SC has kindly offered to escort members to the The Ohel Leah Synagogue at 70 Robinson Road at about 09:30 and again at about 16:00.

Visitors are welcome but should bring some official identity documents with them, such as a passport, for the usual security checks.

Nigel can be reached on +852 2840 1130 or by email [chambers@nkat.net](mailto:chambers@nkat.net)

### TRAVEL INSURANCE

We strongly recommend that you confirm that your travel and medical insurance policies are current for the duration of the Amity visit in the unfortunate event of delays or medical issues arising.