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21 November 2000

Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

By Fax No.: 2877 8024

(Attn.: Mrs Sharon Tong)

Dear Mrs Tong,

**Bills Committee on
Immigration (Amendment) Bill 2000**

Thank you for your letter dated 2 November 2000.

The information requested as per item (b) and (c) of the Appendix of your letter is attached.

As for the information in respect of item (a), we will present it to Members in the form of a PowerPoint presentation at next meeting of the Bills Committee scheduled for 28 November. Before that, we will send you hard copies of the relevant information.

Yours sincerely,

(Linda KP So)
for Secretary for Security

Item 2: Retention of S.2AB(8)

- (a) The need for the provision of the proposed s.2AB(8) is clear. The provision underscores our overriding concern shared by Members of the Committee that there must be adequate safeguards against frauds of the genetic test procedure. The prescribed procedure is safeguarded by the implementation of a full array of preventive measures (as listed in Annex C of our Legislative Council Brief on the Bill).
- (b) S.2AB(8) must be read together with s.2AB(7)(a) and s.2AB(9). S.2AB(7) provides for a prescribed genetic test procedure, while s.2AB(9) obliges the Director of Immigration to inform a person who is required to undergo a genetic test of the provision of s.2AB(8).

There is a need for a prescribed test, otherwise there will be no control over the integrity of the test procedure and the reliability of the test results. S.2AB(8) makes it clear to applicants that those who choose not to take the prescribed test including those who undergo a genetic test on their own may result in adverse inferences being drawn by the Director on their applications.

As explained at the last meeting of the Bills Committee, the Director may or may not draw adverse inferences from the non-compliance. Each case will be considered upon the reasons for refusal or failure to comply with the prescribed procedure.

- (c) So unless Members do not support the need for a prescribed genetic test, s.2AB(8) is necessary and is in order. The Mainland authorities have also made it clear that they will accept the result of a test conducted in the prescribed manner for the purpose of granting exit approval under Article 22(4) of the Basic Law.
- (d) The worries that an applicant may be worse off with the provision of s.2AB(8) are misconceived. A genetic test will only be required if documentary evidence is insufficient to prove the claimed parentage. The Director of Immigration can only make a decision either to approve or reject an application for a Certificate of Entitlement. With or without s.2AB(8), the bottom line for applicants of non-compliance with the prescribed test is that the Director will reject the application.

S.2AB(7) provides a clearly prescribed genetic test procedure for an applicant to follow, which will facilitate the verification of the claimed parentage for the purpose of his application for a Certificate of Entitlement. The laying down of a prescribed procedure helps to prevent abuses and to avoid disputes. This will enable the applications to be processed expeditiously, which will be in the interest of the applicants. S.2AB(8) and s.2AB(9) afford transparency and ensure that the persons required to take the prescribed test are informed of the implications of non-compliance so that they can make an informed choice in deciding whether or not to take the test.

**Item 3: Codes of practice for genetic test procedure
applicable both in the Mainland and Hong Kong**

Application of genetic test

1. Genetic test will only be required when the claimed parent and child relationship cannot be established on the basis of the available documentary evidence submitted by the applicant. The decision as to whether genetic test is required rests with the Director of Immigration, who will take into account the recommendation of the Bureau of Exit-entry Administration.
2. In submitting the application, the applicant and his/her claimed mother/father will be required to provide photos and fingerprints for subsequent verification of their identities in the process of specimen-taking.
3. The applicant will be informed by letter of the need for the genetic test. The applicant will be asked and is free to state the reasons if he or she declines to undergo the test. The applicant will be informed that based on the reasons given for the refusal to undergo the prescribed test, the Director of Immigration may draw adverse inferences from such failure.

Specimen taking

4. Written consent of the person to be tested will be obtained before carrying out the specimen taking process.
5. The officer responsible for specimen taking will be required to confirm by signature that he has checked the identification documents/fingerprints of the person to be tested.
6. The supervisor of the officer responsible for specimen taking will witness and monitor the process and confirm this by signature.
7. A Specimen Collection Form will be kept to record compliance of

the above requirements.

8. Senior supervisory staff will conduct random spot checks on the specimen taking process.
9. Each specimen will be uniquely identified with a bar code label bearing no personal particulars.
10. The specimens will be put into tamper proof envelopes before delivery to laboratory.
11. A full traceable chain of custody of the specimens will be maintained.

Delivery of specimens to the laboratory

12. The specimens will be delivered to the laboratory under locked metal container.
13. Records of acknowledgement receipt of the specimens by the laboratory will be kept.

Testing in the laboratory

14. The laboratories in Hong Kong and in the Mainland will use the same testing reagents from the same manufacturing companies to ensure consistency.
15. The two laboratories will be adopting the same operational procedures which will be documented in one common manual.
16. The laboratory staff will perform the test by referring to the bar code label number only without knowing the identity and case reference number of the person to be tested.
17. The opening of the sealed envelopes of the specimens and every step of analysis process that involves transfer of specimen are done in the presence of two persons, one as the operator and the other as a

witness, with both signing the records pertaining to such.

18. Full audit trails of all specimens and analytical procedures are maintained.
19. All analytical results are independently assessed by two officers.
20. Hong Kong and the Mainland laboratories will exchange the test data and analytical results for comparison and verification before coming to a conclusion.
21. All genetic test reports are subjected to two levels of checking.
22. Genetic test reports without any identity of the applicant but only with the relevant bar code label number will be issued to Immigration Department/the Mainland authorities for further processing of the application.
23. The two laboratories will be randomly selecting previously analyzed samples as “blind tests” for their counterpart to analyze. The results will be cross-checked to ensure full compatibility and as a monitoring measure.