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24 November 2000

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

By Fax No.: 2877 8024

(Attn.: Mr Raymond Lam)

Dear Mr Lam,

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

Meeting on 28 November 2000

Thank you for your letter dated 16 November 2000.

Our response to points (a) – (e) raised in the Law Society's written submission is set out below, seriatim –

- (a) Members may rest assured that the Director of Immigration will be reasonable in deciding whether the available documentary evidence is insufficient to prove a claimed parentage before requesting a genetic test to be conducted. In case a person is aggrieved by the Director's decision not to issue a Certificate of Entitlement due to insufficient evidence to prove the claimed parentage, he may lodge an appeal to the Immigration Tribunal under section s.2AD of the Immigration Ordinance.

- (b) There will be full protection of the privacy of the persons tested (the applicant and his parents). Their tissue samples will be disposed of once a decision is made on the application. In an approval case, the Director will issue a Certificate of Entitlement to the applicant without stating the result of the genetic test. In a rejection case, the Director will inform the applicant that his application has been rejected after examination of all relevant evidence including where applicable, the result of the genetic test. The result of the genetic test itself will not be included in the notification letter, as it is part of but not the only evidence considered by the Director. Should the applicant or his parents who have undergone the genetic test ask for a copy of the test result, the Director will provide it.

- (c) We will charge a fee for the test on a full cost-recovery basis. Fee reduction or waiver will be considered where justified on a case by case basis under s.39(A) of the Public Finance Ordinance. We understand that the Mainland authorities will have similar arrangements.

- (d) We have fully explained in our reply of 21 November 2000 why s.2AB(8) is necessary and is in order. In essence, the provision helps to safeguard the prescribed genetic test procedure, which is essential to prevent fraud and abuse. We note that the Law Society states clearly in its written submission that it supports a well-regulated system to avoid dispute as to the chain of evidence.

- (e) S.2AB(12) of the Bill provides that the procedure and the fee for the genetic test to be set out by notice in the Gazette is not subsidiary legislation. As the genetic test procedure is a very technical administrative procedure, it is appropriate to promulgate it in a Gazette notice. Otherwise, the law would unnecessarily be made complicated. The application procedure for Certificate of Entitlement has likewise been published in the Gazette in July 1997. There are many other examples where administrative procedures are set out in a Gazette notice, rather than made under subsidiary legislation.

We suggest that the fee for the prescribed genetic test be likewise published in the Gazette. The fee will be charged on a full cost recovery basis. There will be no question of overcharging.

Yours sincerely,

(Linda KP So)
for Secretary for Security