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2869 9467  
2877 5029

Secretary for Security  
Security Bureau  
(Attn: Miss Stoney POON  
AS (S)B1)  
Room 649, East Wing  
CGO, Lower Albert Road  
Central  
Hong Kong

By Fax (2868 9159) and By Post

12 October 2000

Dear Miss Poon

### **Rehabilitation Centres Bill**

I am scrutinizing the above Bill with a view to advise the Members on its legal and drafting aspects. I would be grateful if you would clarify the following at your earliest convenience :-

#### Clause 4(6)

The word "progress" in clause 4(6) is not defined. Please clarify what it is intended to mean in the context.

#### Clause 9(4)

The clause permits a police officer or correctional services officer to enter and search a premises for person unlawfully at large and for that purpose to break open door or window of the premises. It seems illogical that the officer should have that power even if **no person** appears to be on the premises.

#### Clause 11(2) & (3)

- (a) Clause 11(3) imports the powers and duties conferred on visiting justices and visiting committees under the Prisons Ordinance (Cap. 234). Section 23 of the Prisons Ordinance states that those powers

and duties are to be prescribed by rules made under section 25. This in fact means rules 222 to 235 of the Prison Rules. Rule 222(1)(a) requires visiting justices to visit prisons at least once a fortnight. This conflicts with the express provision of clause 11(2). Clause 12(2) does not help because the provisions of rule 222(1) of the Prison Rules are imported pursuant to clause 11(3) and not under clause 12(1).

- (b) Since rules 222 to 235 of the Prison Rules cover both prisons and hostels, clause 11(3) leaves one in doubt as to which part of a rule should apply where the rule provides differently in respect of a prison and a hostel (e.g. rule 222(1)). Please consider whether clause 11(3) need to be further fine tuned to iron out such ambiguity.

#### Clause 12(2)

Please consider adding "and Prison Rules (Cap. 234 sub. leg.)" after "(Cap. 234)". The argument based on the definition of "Ordinance" in the Interpretation and General Clauses Ordinance (Cap. 1) is not applicable to "Ordinance" when it is part of the short title of an ordinance.

#### **Prison Rules**

##### Rule 99

The rule does not refer to "magistrates". Please clarify whether any amendment is required in view of the fact that juvenile courts are constituted of permanent magistrates.

##### Rules 256 to 264B

These rules presuppose that sections 24D, 24E and 24F of the Prisons Ordinance are applicable. However, those sections are clearly excluded by clause 12(1). Please clarify whether rules 256 to 264B are still applicable. If not, please consider whether this should be made explicit in clause 12(1).

##### Rules 265 to 272

These rules presuppose the applicability of section 21A of the Prisons Ordinance, which is excluded by clause 12(1) of the Bill. Please clarify whether rules 265 to 272 are still applicable. If not, please consider whether it should be made explicit in clause 12(1).

Your reply before 18 October 2000 would enable us to take the Administration's response into account in our report on the Bill to the House Committee.

Yours sincerely

(KAU Kin-wah)  
Assistant Legal Adviser

c.c. DoJ (Attn: Miss Miranda NG)