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(Attn : Mr. James Chan
Assistant Director of Administration)

Dear Mr Chan,

Hong Kong Court of Final Appeal (Amendment) Bill 2001

I refer to the proposed Committee Stage Amendments enclosed with your letter dated 25 January 2002.

Clause 3

1. The phrase "Chief Executive Election" is only used as part of the name of the Chief Executive Election Ordinance. Would it be more appropriate if the phrase be replaced by "election of the Chief Executive" in the heading?
2. Is there any drafting difficulty if the provisions relating to the election appeal are put under a new Division, together with a clause to the effect that sections 23, 24 and 25 shall apply with necessary modifications (similar to the proposed section 27E)?

Clause 4 (proposed section 27C)

3. What is the reason for requiring a point of law to relate wholly or mainly to the construction of the Basic Law in the proposed section 27C(2)(b)(i)? What happens if the point of law relates to the construction of the Basic Law but not wholly or mainly? The conditions set out in the proposed section 27C(2)(a) and (b) would not apply.

4. What is the reason for the difference in policy :
 - a. where the point of law does not relate to the construction of the Basic Law, either condition in the proposed section 27C(2)(a)(i) or (ii) suffices; where the point of law relates to the construction of the Basic Law, both conditions in the proposed section 27C(2)(b)(i) and (ii) need to be satisfied;
 - b. where the point of law does not relate to the construction of the Basic Law, it has to be fully argued in the proceedings and fully considered in the judgment of the judge in the proceedings (see proposed section 27C(2)(a)(i)); where the point of law relates to the construction of the Basic Law, the same condition is not required (see proposed section 27C(2)(b)(i)).

Clause 6A (proposed Order 59 Rule 4(2) of the Rules of the High Court

5. Have the Administration considered the effect of the new Clause 6A in light of section 27D(4)? What would happen if a party who is granted a certificate under section 27C wishes to apply for an appeal to the Court of Appeal instead of seeking leave to appeal to the Court of Final Appeal under section 27D?

6. Section 27D(4) seems to anticipate that an appeal may be made to the Court of Appeal even if a certificate has been granted under section 27C, so long as the 28 days' period has expired. Section 27D(4)(a) proposes that no appeal shall lie to the Court of Appeal from a decision of the judge in respect of which a certificate is granted under section 27C until the time within which an application can be made under section 27D has expired. Under section 27D(1), an application to the Court of Final Appeal for leave may be made within 28 days from the date on which the certificate is granted, or such extended time as in any particular case the Court may allow.

7. Order 59 Rule 4, Rules of the High Court requires a notice of appeal to be served not later than 28 days from the date immediately following the date on which the judgment or order of the court was sealed or otherwise perfected. The amendment in the new Clause 6A would not help if the judgment is sealed or otherwise perfected before the certificate is granted under section 27C.

8. It would be helpful to Members of the Bills Committee if the Administration could prepare a flow chart showing the calculation of time for appeal under the Bill as amended.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

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