

本署檔號 Our Ref.: CAB C5/7/8
來函檔號 Your Ref.: LS/B/7/01-02

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30 November 2001

Mr Stephen LAM
Assistant Legal Adviser
Legislative Council Secretariat
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Stephen,

Chief Executive Election (Election Petition) Rules (L.N. 241 of 2001)

I refer to your letter of 29 November 2001.

We have consulted the Department of Justice on the question you raised on Rule 46 of the HKCFA Rules (“the Rules”). In our opinion, your concern is unwarranted, for reasons set out below –

- (a) a notice of intended application for leave to appeal shall be in Form A in Schedule 1 (Rule 3 of the Rules) of the Rules. Form A refers to an appeal from the Court of Appeal (“CA”) to the Court of Final Appeal (“CFA”) in the title heading. For the purpose of a leapfrog appeal relating to the Chief Executive (“CE”) election, we are of the view that the reference to the CA in Form A could be adopted for use with suitable modification by changing the reference of the CA to a reference of the Court of First Instance (“CFI”);
- (b) the section heading of Rule 46 refers to “Form of applications”. Under section 18(3) of the Interpretation and General Clauses Ordinance (Cap. 1), a section heading to any provision of any Ordinance shall not have legislative effect and shall not in any way vary, limit or extend the interpretation of any Ordinance. Therefore, the heading does not limit the operation of Rule 46(2), which refers to the variation of forms set out in Schedule 1. Rule 46(2) is not qualified in any way by the word “application”; and

- (c) furthermore, section 37 of Cap. 1, which provides that “[w]here any form is prescribed by or under any Ordinance, deviations therefrom, not affecting the substance of such form, shall not invalidate it”, would be of assistance. The substance of Form A is to give notice of the intended application to the CFA for leave to appeal. In relation to the CE election, there is no doubt to anyone that the appeal will be from the CFI (rather than the CA) to the CFA. Omission or alteration of the title heading “ON APPEAL FROM THE COURT OF APPEAL” will not affect the substance of the notice.

The Chinese version of this letter will follow shortly.

Yours sincerely,

(Chris SUN)
for Secretary for Constitutional Affairs

c.c.	Mr Jimmy MA, LA	2868 2813
	Mrs Percy MA, CAS(2)3	2509 9055
	Miss Kitty CHENG, ALA(Temp)	2877 5029
	D of J (Attn : Mr Gilbert MO)	2869 1302
	Mr Herbert LI)	2869 0062
	JA (Attn : Ms Rebecca PUN)	2501 4636