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24 May 2002

Legislative Council Secretariat
Legislative Council Building
3/F Citibank Tower
3 Garden Road
Hong Kong
(Attn.: Mrs Sharon Tong)

Fax No. 2877 8024

Dear Mrs Tong,

**LegCo Panel on Security
Meeting on 24 January 2002**

At the above meeting the Administration undertook to provide a paper on the exercise of the Director of Immigration's discretionary power under the Immigration Ordinance.

A note is attached for your circulation to Members.

Yours sincerely,

(Winnie Ng)
for Secretary for Security

Director of Immigration's Discretionary Power Under the Immigration Ordinance

It is a fundamental principle of administrative law that the exercise of a discretion by an executive authority must be brought to bear on every case : each one must be considered on its own merits and decided as the public interest requires at the time.

The exercise of discretionary power by the Director of Immigration under the Immigration Ordinance (Cap. 115) is no exception. It has been firmly established, in this context, by the decision of the majority of the Court of Final Appeal in the case of *Lau Kong-yung and Others v. Director of Immigration* of 3 December 1999 as reported in [1999] 3 HKLRD 778 that the Director's discretion must be exercised in the context of the statutory scheme of immigration control.

Indeed, as early as in 1993, the Court of Appeal in *Ho Ming-sai and Others v. Director of Immigration* [1994] 1 HKLR 21 and *R. v. Director of Immigration, ex parte Chan Heung-mui and Others* (1993) 3 HKPLR 533 made it clear that, in the exercise of his discretion under section 13 of the Immigration Ordinance (Cap. 115), the Director is sanctioning an exception when sufficiently strong and powerful humanitarian grounds are demonstrated to justify a favourable decision.

These principles are not disturbed by the recent judgment of the Court of Final Appeal handed down on 10 January 2002 in the *Ng Siu-tung and Sin Hoi-chu* cases (FACV No. 1-3 of 2001). The majority judgment confirms that the exercise of the Director's discretion must not be inconsistent with the statutory provisions nor must it undermine the general constitutional scheme and the specific statutory purpose.

Of course, the Director has a duty to exercise his discretion fairly and properly and will be subject to the supervisory jurisdiction of the court.