CSO/ADM CR 9/4/3222/85(01)

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28 June 2003

By Post

Mr. CHAN Siu-lun
[Address]

Dear Mr. Chan,

Request for full comments on all the points raised in your latest submission dated 1 December 2002

I refer to your letter dated 4 May 2003 and my interim reply dated 15 May 2003 on the captioned subject.

We have since then borrowed from the LegCo Secretariat the folder you sent to the Clerk to Panel on Administration of Justice and Legal Services of the Legislative Council ("the Panel") dated 1 December 2002 to revisit the relevant attachments. Having studied your letter of 4 May and revisited your folder for the Clerk to the Panel, we note that the issue you would like to raise remains to be your earlier request that section 18(3) of the Hong Kong Court of Final Appeal Ordinance ("the Ordinance") should be amended to provide for a further appeal avenue to vary, re-open or set aside the decision made by the Appeal Committee of the Court of Final Appeal ("CFA"). We also note that your letter of 4 May has highlighted again the following points to support your arguments:

(i) there is no evidence that the Judicial Committee of the Privy Council has established practices and procedures similar to section 18(3) of the Ordinance; and

(ii) there should be a sufficient number of CFA judges to hear and determine appeal against decision of the Appeal Committee should s.18(3) of the Ordinance be amended to provide the avenue to vary, re-open or set aside the decision made by the Appeal Committee.

On the above points, you may wish to know that our view are as follows:-

(i) Before the Re-unification, appeals from Hong Kong were referred to the Judicial Committee of the Privy Council, which usually comprised five judges. As to applications for special leave to appeal, the Judicial Committee itself comprising three judges would deal with them. As it was the Judicial Committee itself comprising three judges which would deal with applications for special leave to appeal, there would be no appeal against its decisions. There are no provision in the Practice Directions or Rules in the United Kingdom permitting appeal against a decision of the Appeal Committee of the House of Lords or the Judicial Committee of the Privy Council to refuse leave to appeal. Section 18(3) of the Hong Kong CFA Ordinance just mirrors such a position.

(ii) The Appeal Committee comprises the Chief Justice and two permanent judges of the CFA, or three permanent judges of the CFA, so that the decision of the Appeal Committee would represent in effect the majority view of the CFA. If there were to be further appeal from the decision of the Appeal Committee, this has to be scrutinised by the full court of the CFA as there is no other appropriate body which has the standing, authority and expertise to review the Appeal Committee's decision. Having regard to the principles of natural justice, non-permanent judges have to be appointed in place of the three permanent judges, and hence the CFA would comprise four non-permanent judges and only one judge of out of the Chief Justice and three permanent judges. This represents a departure in the composition of the CFA from the existing position and what is envisaged in the Ordinance to be its usual composition.

As you may note, the above positions have already been set out in our paper submitted to the Panel on 13 September 2001, and in our letter dated 21 November 2001, we do not consider that there are any additional points which may affect our views.

The existing arrangement as specified in the Hong Kong CFA Ordinance should provide adequate safeguard to ensure fair trial by judges of high standing. It has worked well since its inception, and we believe that there is no sound reason for providing an appeal against the decision of the Appeal Committee.

Nonetheless, should you have any new points that you would like to highlight for our attention, please let me know.

Yours sincerely,

(Andy LAM)
for Director of Administration

c.c. JA (Attn: Miss Vega Wong)
DOJ (Attn: Mr. Michael Scott)