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By fax: 2509 9055
5 May 2005

Mrs Percy Ma,
Clerk to Bills Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

via Mr Michael Scott, SASG/GLP

Dear Mrs Ma,

**Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2005
(the “Bill”)**

**Follow-up meeting on 26 April 2005
and next meeting on 9 May 2005**

I refer to your letter of 27 April 2005 addressed to Mr. Stephen Wong and our recent telephone conversations regarding the issues raised by members of the LegCo in respect of the Bill. Our response (which is in the same order as that in your letter) is set out below.

**Proposed amendments to transfer power to determine appeals under the Medical Clinics Ordinance (Cap. 343) (MCO) from the Chief Executive (CE) in Council to the Administrative Appeals Board (AAB)
(Clauses 6 and 7 in Division 3, Part 2 of the Bill)**

- (a) *To advise whether the Administration has proposed to transfer the power of determination of other types of appeals from the CE in Council to the AAB, and, if so, the nature of these appeals.*

Prior to the establishment of the Administrative Appeals Board (AAB), many of the appeals which went to the Executive Council involved matters of a relatively minor nature, such as the issue, renewal and revocation of various

minor licences. It was decided to establish the AAB in 1994 and transfer to it appeals of a general and minor nature, whereas appeals which might have important policy and political implications would continue to be dealt with by the Executive Council. At the time of establishment of the AAB, appeals under 25 ordinances were transferred to the AAB.

The appeals under the Medical Clinics Ordinance (Cap.343) are relatively minor and administrative in nature. It is the only appeal of such nature proposed to be transferred from the CE-in-Council to the AAB in the current legislative session.

Proposed amendments to enhance the powers and operational efficiency of the Legal Aid Services Council (LASC)
(Clause 29 in Division 2, Part 3 of the Bill)

(b) To explain the grounds for introducing the proposed new section 12(1) of the Legal Aid Services Council Ordinance (Cap. 489)

The Bills Committee requested the Administration to explain the grounds for introducing the proposed new section 12(1) of the LASC Ordinance (Cap. 489).

At present, section 12(1) of the LASC Ordinance provides that the LASC shall submit an annual report within 6 months of the end of each year to the Chief Executive. The proposed amendment seeks to extend the time of submission to nine months and to provide the Chief Executive with the power to extend the deadline.

As the financial year of the LASC ends on 31 March, under the existing provisions it has to submit the annual report to the Chief Executive by the end September of the year. Before the deadline, the LASC Secretariat will need to draft the annual report, and the LASC will review the initial and subsequent drafts. The final version will then be translated, vetted, type-set and proof-read before being sent to print. With the increasing workload since its establishment in 1996, the LASC Secretariat finds it operationally difficult to complete the required work in time to meet the statutory deadline, in view also of the intervening summer holiday.

To ensure the quality of the annual report, which is an important means for the Chief Executive, the LegCo, the Administration and the public to monitor the work of the LASC, we consider it necessary to ensure that the LASC has sufficient time and flexibility to prepare an annual report of the required quality, bearing in mind that all the members serve on the LASC on a non-remunerated and part-time basis. The Bills Committee may wish to note that it is not uncommon to allow 9 months for statutory bodies to submit their annual reports and to provide the executive with a power to extend the deadline if necessary. A list of such statutory bodies is attached at **Annex 1**.

The Administration has briefed the LegCo Panel on Administration of Justice and Legal Services on the proposed amendment in June 2001 and March 2003.

Proposed amendments to the Prevention of Bribery Ordinance (Cap. 201) (POBO) to prohibit a person who is required to surrender his travel document from leaving Hong Kong (Clauses 35 and 36 in Division 7, Part 3 of the Bill)

- (c) *To review the drafting of sections 17A(4) and 17A(5) of POBO, e.g. to delete the word “thereupon” or to substitute the word “thereupon” in section 17A(4) of POBO with “by reason thereof”. As members have pointed out, the word “thereupon”, which also appears in section 17A(5), seems to limit the carrying out of an arrest under section 17A(4) to that specific point in time when the person fails to comply with the notice under section 17A(1). After that point in time, the person could no longer be arrested.*

We agree that the word “thereupon” is subject to slightly different interpretations. To avoid any possible confusion, we propose to remove the word “thereupon” and “因此” from s.17A(4) of POBO.

- (d) *To advise whether the arrangements for surrender and return of travel documents under sections 17A and 17B are in line with those applicable to other enforcement agencies. As pointed out by the legal adviser to the Panel on Administration of Justice and Legal Services at the meeting on 14 December 2004, a provision similar to section 17A(1) of POBO also exists in the Dangerous Drugs Ordinance.*

The Administration has identified similar arrangements for surrender and return of travel documents in the Dangerous Drugs Ordinance. Research on this subject should not be related to nor should it delay the current proposal to amend the POBO.

- (e) *To provide a sample of the written notice (bilingual versions) issued by a magistrate under section 17A(1) of POBO.*

A sample of the s. 17A(1) notice is at **Annex 2** for reference.

Proposal to remove a discrepancy in meaning between the English and Chinese texts of section 4(28) of the Summary Offences Ordinance (Cap. 228) (Clause 189 in Division 2, Part 6 of the Bill)

- (f) *To provide information on another court case referred by the Administration which had also commented on the conflict between the English and Chinese texts of section 4(28).*

The offence under section 4(28) of the Summary Offences Ordinance (Cap. 228) was also considered by the Court of Appeal in HKSAR v. Yeung May Wan & Others [2004] 3 HKLRD 797. There was no direct comment on the conflict between the English and the Chinese texts of that section. However, the case is an example of the use of the English text as reflecting the legislative intent of that section subsequently to the judgment of the Court of First Instance in HKSAR v. Lau San Ching & Others [2003] 2 HKC 378 referred to in part (j) of the our letter on 19 April 2005.

With best regards,

Yours sincerely,

(Ms Stella Chan)
Government Counsel
General Legal Policy/Legal Policy Division

#316530

Annex 1

**Time Limit For Submission Of Annual Reports by
Statutory Bodies**

Relevant Legislation	Name of Statutory Body	Submission Deadline
S 16, Cap. 216	Consumer Council	within 3 months after the receipt by it of the auditor's report in respect of its accounts for a financial year, or within such further period as the Financial Secretary may allow
S 15, Cap. 283	Hong Kong Housing Authority	as soon as possible after the end of each financial year...shall lay a copy of every such annual report on the table of the Legislative Council not later than 31 December next following the financial year to which the annual report relates or before such later date as the Chief Executive may allow (i.e. <u>9 months</u>)
S 15, Cap. 365	Employees' Compensation Assistance Fund Board	not later than <u>9 months</u> , or such longer period as the Chief Executive may determine, after the end of each financial year
S 12, Cap. 398	Occupational Safety and Health Council	not later than <u>9 months</u> , or such longer time as the Chief Executive may determine, after the close of each financial year

S 25, Cap. 1114	Hong Kong Trade Development Council	as soon as possible after the end of each financial year, but not later than 6 months after the end of each financial year or such longer period as the Chief Executive may as to any particular year allow
S 19, Cap. 1116	Hong Kong Productivity Council	as soon as possible after the end of each financial year, but not later than 6 months after the end of each financial year or such longer period as the Chief Executive may as to any particularly year allow
S 19, Cap. 1130	Vocational Training Council	within the period of 7 months, or such longer period as the Chief Executive may determine

Annex 2

Information No. _____

Writ No. _____

IN THE MAGISTRATE'S COURT
HELD AT EASTERN MAGISTRACY
HONG KONG.

IN THE MATTER OF Section
17A of the Prevention of
Bribery Ordinance, Chapter
201, Laws of Hong Kong.

NOTICE TO SURRENDER TRAVEL DOCUMENT

TAKE NOTICE that pursuant to section 17A of the Prevention of Bribery Ordinance, Chapter 201, Laws of Hong Kong, I hereby give you notice that you are required to surrender to the Commissioner of the Independent Commission Against Corruption any travel document in your possession.

DATE this day of .

(MAGISTRATE)

TO: