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17 September 2005

Mrs Percy Ma
Clerk to Panel on Constitutional Affairs
Legislative Council
Legislative Council Building
8 Jackson Road
Hong Kong

By Fax: 2509 9055

Dear Mrs Ma,

Prorogation: Submission from the Law Society of Hong Kong

On 8 September 2005, the Administration received from the LegCo Secretariat a submission from the Law Society of Hong Kong on prorogation (LC Paper No. CB(2)2558/04-05(01)). The Administration's response to the submission is set out below.

Submission of the Law Society of Hong Kong

In its submission, the Law Society endorses the suggestion made by Professor Yash Ghai (LC Paper No. CB(2)1477/04/05(01)) that the law should provide for an automatic prorogation at a fixed period of time before the term of the Legislative Council (LegCo) expires. The Law Society argues that such an arrangement has the advantage of providing clarity and consistency concerning electoral arrangements of LegCo, and that it would not affect the constitutional position of the Chief Executive (CE) and LegCo as provided for under the Basic Law.

...../P. 2

The Administration's Position

With regard to the idea put forth by Professor Ghai of introducing "automatic prorogation", the Administration has set out its position in a paper for the Panel on Constitutional Affairs (CA Panel) (LC paper No.CB(2)2255/04-05(04)). It has also explained its position at the CA Panel meeting on 18 July 2005. In gist, the Administration's position is as follows:

- (i) the existing arrangements are consistent with the Basic Law;
- (ii) the power of prorogation of the CE is constrained by the terms of section 6 of the LegCo Ordinance (LCO) (Cap.542) i.e. it may only be exercised to enable a general election of LegCo to take place. There are also other constitutional and legal provisions to govern the respective powers and functions of the CE and LegCo. There is no basis to presume that the arrangements will be abused;
- (iii) the current rules relating to prorogation have worked well, as recognized by Prof. Ghai in his submission; and
- (iv) whilst the proposed arrangement of "automatic prorogation" may bring about certainty, when put in practice it may be unduly rigid and cannot accommodate unforeseeable or urgent business towards the end of a term.

In its submission, the Law Society notes that the pre-Reunification practice may not be entirely relevant to the new constitutional order given the role of the Basic Law. In this respect, the Administration would like to reiterate that the existing arrangements are consistent with the Basic Law. This is in line with the submission of the Hong Kong Bar Association, which concludes that "the powers conferred upon the CE under the Ordinance and the Rules of Procedures for fixing the relevant dates of a LegCo session or for the prorogation of LegCo do not appear to offend any provisions of the Basic Law." (paragraph 47(b) of CB(2) 1477/04-05(05(02)).)

Having considered the submission of the Law Society, the Administration maintains the view that the existing arrangements concerning prorogation of LegCo are consistent with the Basic Law, are appropriate, and should remain unchanged.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Raymond TAM', with a long horizontal flourish extending to the right.

(Raymond TAM)
for Secretary for Constitutional Affairs