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11 July 2008

The Hon Margaret Ng  
Chairman of the Panel on Administration  
of Justice and Legal Services  
Legislative Council Building  
8 Jackson Road, Central  
Hong Kong

Dear *Margaret*,

**Panel on Administration of Justice and Legal Services**

**Follow up to the meeting on 28 April 2008**

**Applicability of HKSAR laws to offices set up by  
the Central People's Government (CPG) in the HKSAR**

Thank you for your letter of 5 May 2008.

I note the concerns of the Panel about the time taken in completing the adaptation of laws programme. While these concerns are legitimate, the progress made over the years has not been insignificant. As the two papers earlier submitted to the Panel pointed out, over the years the Legislative Council has enacted a total of 57 Ordinances for the purpose of the adaptation of about 500 Ordinances.

As regards the adaptation of the 16 Ordinances which expressly bind the Government but are silent on their applicability to the offices set up by the Central People's Government in the Hong Kong Special Administrative Region (CPG Offices in HKSAR), the exercise involves careful study of the relevant provisions, as well as consultation and discussion with the relevant authorities of the Central People's Government

(CPG) on whether and how those Ordinances can be made applicable to those offices.

However, as the Panel was informed in April, a significant breakthrough has been achieved with an application formula having been agreed with the CPG. With the benefit of this formula, as a start, the Administration intends to introduce in the 2008/09 legislative session legislative amendments to four Ordinances to provide expressly for their applicability to the three CPG Offices in HKSAR in addition to their current application to the Government. The Administration will continue to consult the CPG on the way forward regarding the remaining Ordinances.

The Personal Data (Privacy) Ordinance (Cap. 486) which you have highlighted in your letter is one of those 16 Ordinances in question. As you appreciate, complex issues are involved in this Ordinance. More time is needed by the Administration to study whether to include any express provisions on the applicability of the Ordinance to the three CPG Offices in HKSAR. The Administration is therefore unable at this juncture to advise the Panel on the time frame of any proposed way forward as far as this Ordinance is concerned, but will do so as soon as we are able to.

On the question of section 66(1) of Interpretation and General Clauses Ordinance (Cap. 1), we do not see any inconsistency between this section and Article 22(3) of the Basic Law. The principle enshrined in section 66(1) of Cap. 1, namely, that legislation does not bind the sovereign power unless it expressly provides so or it appears by necessary implication that the sovereign power is bound, has been adopted in many other common law jurisdictions. While Article 22(3) of the Basic Law requires the CPG Offices in HKSAR to abide by the laws of the HKSAR, it does not require that every statute here must be applicable to them. The application of individual laws by means of express provision to certain persons or categories of person, is a matter calling for a host of considerations including matters of law and policy.

As the Administration explained in paragraph 14 of its paper to the Panel in April 2008 (LC Paper No. CB(2)1699/07-08(04)), ordinances or provisions with references pending adaptation will continue to be construed in accordance with section 2A and Schedule 8 of the Interpretation and General Clauses Ordinance Cap.1. Hence the legal effect of those ordinances or provisions will not be compromised.

My colleagues in the Administration and I appreciate your views and the need to make every effort to expedite the completion of the adaptation programme.

With best regards,

Yours *sincerely,*

A handwritten signature in black ink, appearing to read "Yan Lung". The signature is written in a cursive, flowing style with a large initial 'Y'.

(Wong Yan Lung, SC)  
Secretary for Justice

c.c. Chief Secretary for Administration  
Secretary for Constitutional and Mainland Affairs