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15 October 2009

Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Ms Josephine So)

Dear Josephine,

**Bills Committee on Immigration (Amendment) Bill 2009
Meeting on 29 September 2009**

We would like to set out below our response to a number of issues raised at the above meeting as requested.

There were discussions on the suggestion of imposing a recognizance condition of 'prohibition from work'. We consider it more appropriate to specify as an offence for the taking of employment (or establishing/joining in business) by illegal immigrants (IIs).

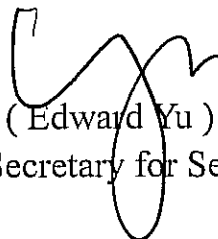
Recognizance is an alternative to detention under section 36 of the Immigration Ordinance (Cap. 115). Under the existing legislation, the only permissible condition that may be imposed on granting recognizance is the payment of a sum of money if the subject has breached the reporting condition stipulated in Form No. 8 in Schedule 1 to the Immigration Regulations (Cap. 115 sub. leg. A). Where there is a breach of the reporting condition, the specified amount is payable and the subject is liable to detention. We do not think that the consequence of breaching a recognizance condition will produce a sufficient effect to deter IIs from taking unlawful employment.

Other persons (e.g. visitors) taking unlawful employment are subject to prosecution and penal consequence under the Immigration Ordinance (e.g. section 41). We do not consider that the sanctions for IIs taking unlawful employment should be lesser than other persons not lawfully employable.

If conditions and sanctions other than those in the relevant prescribed forms were allowed through legislative amendments, the administrative decisions involved in imposing additional conditions to different individuals might attract judicial challenges and add uncertainty to the implementation of such sanctions.

By way of background, the power of the Director of Immigration to impose recognizance conditions was challenged in a judicial review case heard in October 2005 (*V v Director of Immigration*, HCAL 60/2005). The Court of First Instance ('CFI') held that the Director did not have power under section 36(1) of the Immigration Ordinance to impose conditions not prescribed in the form (Form No. 8, Schedule 1 to the Immigration Regulations). The CFI's decision was affirmed by the Court of Appeal.

Yours sincerely,



(Edward Yu)

for Secretary for Security

c.c. Director of Immigration (Attn: Mr Corrado Chow)
 Department of Justice (Attn: Mr Allen Lai)