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URGENT BY FAX
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14 October 2009

Ms Veronica WONG
AS (Security) A2
Security Bureau
6th floor,
Main and East Wings,
Central Government Offices,
Hong Kong

Dear Ms WONG,

Rules of the High Court (Amendment) Rules 2009 (L.N. 186 of 2009)

I am scrutinizing the legal and drafting aspects of the above Rules. It would assist Members if you could clarify the following matters.

Rule 4(4) of the new Order 117A provides that the expedited originating summons and a copy of the affidavit in support must be served on the subject person not less than 7 clear days before the date fixed for the hearing of the application. Rule 4(5) provides that if a subject person served with the expedited originating summons wishes to adduce any affidavit evidence in opposition to it, the person must, within 28 days after the service, file an affidavit of evidence with the Court and serve a copy of the affidavit on the Secretary for Justice. The effect of the above rules is that the period for the person served with the expedited originating summons to adduce any affidavit evidence in opposition has not expired by the time of the hearing. In such circumstances, will the hearing be vacated or proceeded with? Please explain the rationale for this arrangement. Please also explain the rationale for a similar arrangement under rules 7(4) and 7(5), and rules 10(3) and 10(4) of the same Order.

It is also noted that a period of 14 clear days is provided for under rule 10(3) instead of 7 clear days under rules 4(4) and 7(4). Please explain the rationale for providing a shorter period under rules 4(4) and 7(4).

Rule 17(a) of the new Order 117A provides that where a claim of legal privilege is made in respect of a thing in the course of the execution by an authorized officer of a warrant issued under section 12C or 12G of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575), the thing must be secured in a sealed container and the sealed container has to be handed to the authorized officer for safe keeping pending an application to the Court. However, it is noted that rule 16(2)(b) provides that the sealed container must be deposited with the Court where a claim of legal privilege is made in respect of a material in the course of the exercise of powers conferred by an order under section 12A or 12B of Cap. 575. Please explain the rationale for the different arrangement under these rules.

The above Rules will be considered by the House Committee at its meeting on 16 October 2009. I would appreciate if you could let me have the said information (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) as soon as possible.

Yours sincerely,

(Timothy TSO)
Assistant Legal Adviser

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