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19 February 2010

Ms. Veronica WONG
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Central Government Offices
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Central
Hong Kong

BY FAX
Fax No. : 2524 3762

Dear Ms. Wong,

**Proposed Resolution under section 12A of the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**

We refer to the notice of motion given by the Secretary for Security on 12 February 2010, seeking the Council's approval of the Code of Practice for requiring persons to furnish information or produce material under Section 12A of the United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) (the Code). To assist Members' consideration of the Code, we should be grateful if you would clarify the following matters:

Procedures for requiring persons to answer questions or furnish information

- (a) The Preamble and paragraph 1 of the Code provide that a copy of the Code must be given to any person on whom a section 12A(5) or (6) notice has been served, and that the Code must be readily available in English and Chinese at all places where such persons may be required to answer questions, furnish information or produce material. There is, however, no requirement for the Code to be made available in other languages to cater for ethnic minorities who do not read Chinese or English. To ensure that such persons understand the provisions of the Code, will the Administration provide free interpretation service to them? If so, please consider stipulating this in the Code.
- (b) Paragraph 10 of the Code further provides that when necessary, an interpreter qualified for court purposes should be engaged to make a record of the interview in the language used by the interviewee. Please clarify whether the interpreter's role is limited to making the

interview record, and whether he may also assist the interviewee generally in relation to the interview (including, for example, requesting the presence of legal advisers, asking for refreshment breaks and interpreting the contents of the Code to an interviewee).

- (c) While paragraph 11 applies to an interviewee who is or appears to the authorized officer to be under 16 years of age, paragraph 12, as presently drafted, only applies to interviewees who appear to the authorized officer to be suffering from a mental disability or incapacity. Please clarify whether paragraph 12 is intended also to apply to interviewees who are suffering from a mental disability or incapacity.
- (d) While visually handicapped persons are allowed under paragraph 14 of the Code to have a barrister and/or a solicitor present during the interview, interviewees who have a hearing or speech impediment do not seem to have a similar right under paragraph 13. Please explain the differences between paragraphs 13 and 14 in terms of the interviewee's entitlement to be accompanied by a barrister and/or solicitor during the interview.
- (e) Under paragraph 15, short breaks for refreshment shall be provided at intervals of approximately two hours. How about breaks for rest or other reason (See paragraph 17(d) of the Code)? At what intervals are such breaks to be provided? Is it necessary to make provision for this matter?
- (f) In respect of paragraph 20(a) and (b), you may wish to consider adding the phrase "or appears to the authorized officer to be" immediately after the words "who is", since the same language is used in paragraphs 11 and 12.

Supervision and complaints

- (g) Paragraphs 27 to 29 provide that if any provision of the Code has not been complied with, a complaint may be made to a supervisory officer who shall report the complaint to a senior officer as soon as reasonably practicable. The Code is, however, silent as to how the complaint will be followed up and investigated, when (if at all) the results of the investigation will be communicated to the complainant, and what consequences (if any) will ensue if a complaint is upheld. Please advise the manner and the time frame in which the Administration intends to deal with complaints made under paragraphs 27 to 29 of the Code.

Promulgation and commencement of the Code

- (h) How will the Code be promulgated after it has been approved by the Legislative Council? Will it be published in the Gazette in the form of a legal notice?
- (i) According to the draft speech of the Secretary for Security, the Code will come into operation on the day appointed for the commencement of section 12A of Cap. 575. Please consider whether it is necessary to include a provision providing for the commencement of the Code. Please also advise the proposed commencement date of section 12A.

Ancillary matter

- (j) According to paragraph 8 of the Administration's paper on the proposed rules of court and code of practice to be made for Cap. 575 issued to the Panel on Security in November 2008 (LC Paper No. CB(2)347/08-09(07)), in the light of the code of practice prepared under section 12A(14) of Cap. 575, the Administration has also taken the opportunity to update the code of practice promulgated under section 3(19) of the Organized and Serious Crimes Ordinance (Cap. 455) to ensure procedural consistency. Please let us know when the Administration intends to introduce the updated code of practice under Cap. 455 into the Legislative Council.

We have also suggested at **Annex** a number of textual amendments to the Chinese text of the Code for your consideration.

As the Code will be considered at the House Committee meeting of 26 February 2010, we look forward to receiving your reply in both languages as soon as possible.

Yours sincerely,

(Bonny LOO)
Assistant Legal Adviser

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Comments on the Chinese text of the Code

1. The full expression "Code of Practice" (as opposed to its abbreviated form "the Code"), which is used in the title, the preamble, paragraph 1 and paragraph 17(a) of the Code, should perhaps be referred to in the Chinese text as "實務守則", rather than simply "守則": See the Chinese text of section 12A(14) of the Ordinance.
2. In paragraph 1 of the Code, please consider replacing "供...一般市民參考的重要資料" with "公眾人士須知的重要資料" to reflect the meaning of the corresponding English text.
3. Instead of using the expression "他或她" as the gender-neutral terms, please consider using "該人" (paragraph 4) or "被問者" (paragraphs 9, 10(a), 11, 12 and 19). See the usage of "該人" in paragraph 3.
4. In paragraph 12(b) of the Code, it is perhaps more appropriate to refer to the expression "a person who has experience or training in the care of mentally handicapped persons" in the Chinese text as "一名(rather than 任何)在照顧弱智人士方面富有經驗或受過訓練...的人".
5. We suggest that the first sentence of paragraph 25 be rephrased as follows:

"若根據條例第 12A 條令提交的材料被保留，提交該材料的人必須在合理的切實可行範圍內盡速獲發收據。"
6. In paragraph 25, since the English text refers to "description" instead of "detailed description" of the material, please consider amending the Chinese text from "詳細說明" to "說明" or "描述".
7. In paragraph 26, the Chinese text of "relevant offence" should be "有關罪行", not "某項罪行". Please refer to the definition of the term in section 2(1) of Cap. 575.