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28 April 2010

Ms. Veronica WONG
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Central Government Offices
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Central
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BY FAX
Fax No. : 2524 3762

Dear Ms. Wong,

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

We refer to the Administration's response issued in April 2010 to issues raised at the Subcommittee meeting held on 23 March 2010 (LC Paper No. CB(2)1370/09-10(01)) (the Paper) and the discussion at the Subcommittee meeting held on 27 April 2010. We should be grateful if you would clarify the following matters:

Interviewee under the age of criminal responsibility

- (a) Paragraph 4 of the Paper seems to suggest that the effect of the conclusive presumption under section 3 of the Juvenile Offenders Ordinance (Cap. 226) is that neither a child under 10 years of age nor his or her parent/guardian/accompanying adult will be held liable for an offence under Cap. 575 "*or any other local legislation*". Please confirm whether a child under 10 and his parent/guardian/accompanying adult may be prosecuted at common law (e.g. for contempt of court) for failing to comply with a section 12A order issued by the Court of First Instance.

Privilege against self-incrimination

- (b) Paragraph 7(c) of the Paper clarifies that legal professional privilege (LPP) and the privilege against self-incrimination (PSI) are overriding and that nothing in Cap. 575 would require the disclosure of anything that is subject to LPP or PSI. While Rule 16 of Order 117A of the Rules of the High Court (as amended by L.N. 186 of 2009) provides for the resolution of disputed LPP claims, no such procedure is specified in relation to any PSI claim which may be disputed by a law enforcement agency. Please clarify how a law enforcement agency will deal with a PSI claim in the context of

a section 12A order, and how any dispute as to such claim will be resolved.

- (c) The English text of paragraph 4(d) of the proposed Code of Practice (the Code), as currently revised, states that if an interviewee does furnish information or material under a section 12A order, the information/material cannot be used against him in criminal proceedings etc. The Chinese text, however, uses the expression "自願...提供". Please consider whether it is necessary to amend the English text by adding "voluntarily" before "furnish" to make clear that paragraph 4(d) applies where an interviewee chooses, on a voluntary basis, to provide information/material even though he is excused from doing so by reason of LPP or PSI under paragraph 4(c).

The provision of the Code to persons subject to a section 12A order

- (d) The Administration has confirmed that it sees no difficulty in providing a copy of the Code to the person subject to a section 12A order at the time when the Secretary for Justice serves a notice under section 12A(5) or (6) and prior to the interview: see item 8 of Annex A to the Paper. Please consider specifying this requirement in the Preamble to the Code which at present is silent as to precisely when the Code will be given to the person.
- (e) The Administration has also agreed, in the first instance, to translate the Code into the six official languages of the United Nations, and to provide translated copies to persons who do not understand Chinese or English. The Administration has also agreed to provide a Braille copy of the Code to interviewees who are visually impaired: see paragraph 10 of the Paper. Please consider making this clear in paragraph 1 of the Code which, as drafted, only requires the Code to be available in English and Chinese.
- (f) In this connection, in reply to Hon Emily LAU's question (LCQ14) at the Legislative Council meeting held on 12 March 2008, the Secretary for Security confirmed that the Notice of Rights to Persons Detained in Custody by the Police and the Personal Information Collection Statement had been translated into nine Asian languages (i.e. Tagalog, Vietnamese, Thai, Indonesian, Hindi, Mongolian, Nepali, Tamil and Urdu). Please also consider translating the Code into these Asian languages.

An interviewee's right to make telephone calls

- (g) Members have expressed concerns that paragraph 9 of the Code which, as drafted, permits only one telephone call to be made. The Administration has indicated that any such call made by the interviewee should be "under supervision to prevent the likelihood of prejudice to the investigation": see item 5 of Annex A to the Paper. To address Members' request that more flexibility be given to interviewees in making telephone calls, you may wish to consider amending paragraph 9 with reference to section 4 of the Independent Commission Against Corruption (Treatment of Detained Persons) Order (Cap. 204 sub. leg. A) which allows a detainee:

- (i) to communicate with a legal adviser and to consult with him in the presence, but out of the hearing, of an officer; and
- (ii) to speak on the telephone to his legal adviser, relatives and friends,

unless such communication is reasonably likely to cause unreasonable hindrance or delay to the investigation of the suspected offence or the administration of justice.

Supervision and complaints

- (h) Paragraphs 27 to 29 of the Code 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. Although the Code does not expressly say so, the Administration has confirmed that any follow up action and investigation will be handled in accordance with the existing complaint mechanism established under the relevant law enforcement agencies: see item 15(b) of Annex A to the Paper. Please consider specifying in the Code how any such 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.

As the Subcommittee is scheduled to meet again on 6 May 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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