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4 May 2010

Mr Bonny Loo
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Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Loo,

**Proposed Code of Practice under Section 12A of the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**

I refer to your letter dated 28 April 2010 regarding the proposed Code of Practice for the United Nations (Anti-Terrorism Measures) Ordinance (“the Ordinance”). Our response to the issues raised is set out in the ensuing paragraphs seriatim –

Interviewee under the age of criminal responsibility

- (a) No prosecution would be brought against a child under the age of 10 by virtue of section 3 of the Juvenile Offenders Ordinance. Accordingly, a child under the age of 10 has no legal responsibility under statute law and common law. It follows that an interviewee under the age of 10 will not be held liable for a criminal offence if the interviewee fails to comply with the requirements to furnish information or produce material under section 12A of the Ordinance. The interviewee’s parent/ guardian/ accompanying adult will also not be held liable for an offence in such situation.

Privilege against self-incrimination

- (b) If an interviewee claims a privilege against self-incrimination, the law enforcement agency has the duty to and will put the questions in another way to exclude the self-incriminating element. Law enforcement agencies will also seek legal advice as necessary.
- (c) Regarding the suggested textual amendment to paragraph 4(d) of the Code of Practice, for consistency sake, we agree to add the word “voluntarily” before “furnish” in paragraph 4(d) of the English version of the Code.

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

- (d) We agree to set out in the Preamble of the Code that a copy of the Code and its Annexes would be provided to the person subject to a section 12A order at time of the service of the order. The relevant amendments are as follows -

“Every person who is required to answer questions, furnish information or produce material pursuant to a notice issued by the Secretary for Justice (a “Secretary for Justice’s Notice”) under section 12A(5) or (6) of the United Nations (Anti-Terrorism Measures) Ordinance (“the Ordinance”)(Cap. 575) should be provided with a copy of this Code of Practice and its Annexes at the time when the Secretary for Justice’s Notice is served.”

- (e) Regarding the comment on the provision of Braille copy and translated copies of the Code, the amendment to paragraph 1 of the Code is as follows -

“This Code of Practice must be readily available in English and Chinese at all places where persons may be required to answer questions or otherwise furnish information, or at which persons may be required to produce material, pursuant to an order made under section 12A of the Ordinance (a “section 12A order”). The Code of Practice will also be made available in Braille and in other languages.”

- (f) As for the comment on the translation of the Code of Practice in other languages, we agree to translate the Code into major languages commonly adopted internationally. As for other formats, the Administration will provide assistance.

An interviewee's right to make telephone calls

- (g) For the comment on interviewee's request to make telephone calls, our detailed response is set out in paragraph 5 of the discussion paper for the Sub-committee meeting on 6 May 2010. We would like to make it clear that a person subject to a section 12A order under the Ordinance is not under arrest or detention. The order only requires such person to answer questions or otherwise furnish information, or produce material. As regards the Independent Commission Against Corruption (Treatment for Detained Person) Order (Cap. 204A), the Order aims to make provisions with respect to the treatment of detained persons.

Supervision and complaints

- (h) Paragraphs 27 to 29 of the Code of Practice set out the procedures for handling complaints filed by interviewees against the authorized officers. Any follow up action and investigation will be handled in accordance with the established complaint mechanism established under the relevant law enforcement agencies. The relevant details and procedures have been uploaded to the websites of the law enforcement agencies respectively.

(Ms Veronica Wong)
for Secretary for Security

c.c.

LegCo Secretariat (Attn: Miss Mary So)

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