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5 October 1999

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Fax No. : 2810 7702
Total no. of page(s) : 3

Dear Mr Lam,

Witness Protection Bill

We are scrutinising the legal and drafting aspects of the Bill. We would be grateful for your clarification of the following points-

The definition of "witness" in clause 2

The definition of "witness" means, among other things, "a person who has given, or who has agreed to give, evidence on behalf of the Government in proceedings for an offence".

Section 19 of the Hong Kong Reunification Ordinance (Ord. No. 110 of 1997) provides that criminal proceedings which immediately before 1 July 1997 could have been brought by, in the name of or against the Crown may on and after that date be brought by, in the name of or against, as the case may be, the Hong Kong Special Administrative Region.

Presumably, the term "proceedings for an offence" in the definition of "witness" refers to criminal proceedings. Therefore, in the light of section 19 of the Hong Kong Reunification Ordinance, our view is that such evidence is given not on behalf of the Government but on behalf of the Hong Kong Special Administrative Region.

Clause 4(3)(g)

In relation to "other witnesses", is the term restricted to other witnesses in the same case or extended to other cases, or both?

Clause 4(4)

Under what circumstances, may the approving authority require the participant to sign another memorandum of understanding on or after reaching 18 years of age?

Can the participant refuse to sign the new memorandum of understanding?

Clause 5(2)(a)(i)

What is the purpose of requiring a witness to undergo medical tests or examinations?

Clause 6(2)(a)(iv)

Clause 6(1)(b) provides that it is mandatory for a memorandum of understanding to contain a provision to the effect that protection and assistance under the witness protection programme may be terminated if the participant breaches a term of the memorandum of understanding. In the light of clause 6(2)(a)(iv), is it necessary to retain clause 6(2)(9)(iv) which appears to be redundant?

Clause 9

Is a participant with new identity entitled to benefits under his former identity but arising after he has joined the witness protection programme, for example right of succession?

Clause 11

Upon termination of protection of a participant with new identity, what are the safeguards for protecting the rights acquired by the former participant during the period of protection; and what are the steps to be taken by the Administration to ensure that obligations incurred by the former participant are to be met?

Clause 13

The circumstances of review are restricted to decision of the approving authority under the Ordinance, upon enactment-

- (a) not to include a person; or
- (b) to terminate his protection as a participant

in the witness protection programme. Would the Administration consider it appropriate to extend the circumstances of review to variation of the terms of a memorandum of understanding under clause 6(5)?

Your early reply, in both languages, is very much appreciated.

Yours sincerely,

(Stephen Lam)
Assistant Legal Adviser