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Urgent by Fax (2877 5029)

18 November 1999

Legislative Council Secretariat
Legal Service Division
Legislative Council Building
8 Jackson Road
Central
Hong Kong

(Attn: Ms Bernice Wong, Assistant Legal Adviser)

Dear Ms Wong,

Immigration (Amendment) Regulation 1999 (L.N. 273 of 1999)

Thank you for your letter of 13 November 1999. The information you requested is as follows:

1. As the Director of Immigration has not refused any application for a certificate of entitlement or for a certified duplicate of a certificate of entitlement since 1 July 1997, the problem of appeals being lodged out of time does not arise.

As for future appeals which are not lodged within the prescribed time limit, it will up to the Immigration Tribunal to decide whether or not they should be accepted.

2. The different nature of the appeals is specified in subregulation (1) to both regulations. Regulation 9A(1) relates to appeals under **section 53A** of the Immigration Ordinance whereas regulation 9B(1) to appeals under **section 2AD** of the same Ordinance. There is no confusion as to the nature of the relevant appeals.

- 3.(a) Section 2AD(3) of the Immigration Ordinance prohibits the appeal to be lodged at any time at which the applicant is in Hong Kong. For this reason, the appellant may be unable to appear in person at the hearing of his appeal. The purpose of the proposed paragraph 14(1)(a) is to allow the Tribunal to proceed in this circumstance and to avoid any challenge on this ground.
- (b) The term “appellant” is defined in the proposed paragraph 1 of Schedule 4 and has the same meaning throughout Schedule 4. The term "appellant" in paragraph 14(1)(b) and (c) does not exclude the applicant, who having lodged an appeal outside Hong Kong under section 2AD, may subsequently enter Hong Kong lawfully and be able to appear at the hearing.
- (c) There will not be any confusion in view of (a) and (b).
- (d) The answer is negative. The Tribunal may hear an appeal in the absence of the appellant only under the circumstances prescribed in paragraph 14(1) and that it would be proper in all the circumstances to do so.
- (e) The answer is negative.
- (f) The reason for adopting the existing definition in the proposed paragraph 1 is to make the appeal rules applicable to all appeals lodged under section 2AD of the Ordinance, regardless of whether the appeal has been lodged in Hong Kong by a person who has represented another to apply for a certificate of entitlement or by a person outside Hong Kong (where section 2AD(3) applies). We think that the existing version is sufficiently clear and no confusion would arise.

4. The answer is affirmative. The appointment of an immigration officer as the Director of Immigration's representative is an administrative arrangement that does not require the Director's personal decision.

I hope you will find the above information useful in making your report on the Amendment Regulation to the House Committee. Please feel free to contact me if I can be of further assistance.

Yours sincerely,

(K S SO)
for Secretary for Security