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31 May 2000

The Hon Mrs Anson CHAN, GBM, JP
The Chief Secretary for Administration
Government Secretariat
Central Government Offices
Lower Albert Road
Hong Kong

Dear Mrs CHAN,

Panel on Administration of Justice and Legal Services
Applicability of the Personal Data (Privacy) Ordinance
to CPG offices in Hong Kong and related issues

On behalf of the Panel, I write in connection with the review of the applicability of the Personal Data (Privacy) Ordinance (PDPO) to CPG offices in Hong Kong and other related issues.

As you may recall, the reference to "Crown" in section 66 of the Interpretation and General Clauses Ordinance was adapted to "State" by way of the Adaptation of Laws (Interpretative Provisions) Bill which was passed on 7 April 1998. There was wide public concern as to why certain ordinances should be binding on the Hong Kong Government, but not "State" organs. The Administration then undertook to conduct a review of the 17 relevant ordinances that expressly bound the Government, but were silent otherwise on their applicability to "State" organs in Hong Kong. The review of the ordinances, except the PDPO, was completed in February 1999.

According to the Administration, the review of the PDPO would need more time because of its complexity. Since then, the Panel has closely monitored the progress of the review. Despite repeated requests by the Panel in the past 14 months, the Administration has no substantive progress to report.

At a recent Panel meeting, the Administration has briefed the Panel on the review of the PDPO. Members note that discussions are continuing with the CPG, but details of the discussions cannot be disclosed. Members are dissatisfied with the time taken for completing the review. Given that Article 22 of the Basic Law stipulates that CPG offices set up in Hong Kong and their personnel should abide by the laws of Hong Kong, some members of the Panel hold the view that the decision as

to whether an ordinance should bind the CPG offices in Hong Kong should be a matter of principle, regardless of its complexity. They are at a loss as to what can be the cause of this extraordinarily protracted "consultation". Surely whether a Hong Kong law should or should not bind the CPG offices in Hong Kong is not subject to the consent to be bound.

The Panel has requested the Administration to submit quarterly progress report on the review of the PDPO commencing from October 2000, and to provide information regarding the meetings held and to be held with the CPG. The Clerk to the Panel has already written to the Home Affairs Bureau in this respect. Noting that the review involves a number of bureaux and departments, members have suggested that officials from the highest level of the Administration should attend future Panel meetings for discussion of this item.

In the course of discussion, members of the Panel have also raised concern about the wider issue of adaptation of laws. They are particularly concerned about the following legislation enacted in the current session and bills being scrutinized by LegCo which all touch on the question of binding force one way or another. This may suggest that this question is now affecting Hong Kong's legislative process.

- (a) Arbitration (Amendment) Bill 1999 - The Bill was passed by LegCo on 5 January 2000. Although the Administration confirmed that it was the policy intent of the Bill to bind CPG offices in Hong Kong, it still has not provided an express provision to this effect. The current holding position is that it binds the HKSAR Government.
- (b) District Court (Amendment) Bill 1999 - The Bill was passed by LegCo on 17 May 2000. Again, by agreement, the term "Government", instead of "the State" was adopted as a holding position. The Administration has agreed to re-visit all court-related ordinances including the District Court Ordinance and proceed with their full adaptations, following the adaptation of the Crown Proceedings Ordinance (Cap 300). However, there is no specific timetable for adaptation of Cap 300 at this stage.
- (c) Adaptation of Laws (No. 9) Bill 1999 - The Administration has agreed to withdraw certain proposed adaptation amendments concerning the binding effect on CPG offices in Hong Kong and to deal with them in an omnibus bill to be introduced in the next legislative session. However, the Administration has yet to reach a solution, with the result that resumption of Second Reading debate on the Bill is still pending.
- (d) Adaptation of Laws (No. 16) Bill 1999 - The present position is that the Administration does not agree to adapt "Crown" to "Government" in the two non-immunity provisions in the Bill at this stage, as proposed by the Bills Committee. It proposes to take out the two adaptation proposals from the Bill and introduce legislative amendments in a separate legislative exercise in the next session.

- (e) Dangerous Drugs, Independent Commission Against Corruption and Police Force (Amendment) Bill 1999 - The Bills Committee is still waiting for the Administration's response as to whether it would introduce a CSA to add a binding provision on the State.

I should be grateful if you could see your way to expedite the review of the applicability of PDPO to the CPG offices in Hong Kong and to address the other issues raised. I look forward to your early reply.

Yours sincerely,

(Hon Margaret NG)
Chairman
Panel on Administration of Justice and Legal Services