

**National Security (Legislative Provisions) Bill –
The meaning and interpretation of the term “consideration”**

This note provides additional information on the meaning of the term “consideration” under section 91(1) of the Criminal Procedure Ordinance (Cap. 221).

2. In response to questions raised at the meeting of the Bills Committee on the National Security (Legislative Provisions) Bill held on 8 April 2003, we have explained that the term is likely to be interpreted according to its well-established meaning in the law of contract.

3. In *Law of Contract*, 10th ed. (1999), Sir Guenter Treitel explains the meaning of consideration as follows -

“The traditional definition of consideration concentrates on the requirement that ‘something of value’ must be given and accordingly states that consideration is either some detriment to the promisee (in that he may give value) or some benefit to the promisor (in that he may receive value). Usually, this detriment and benefit are merely the same thing looked at from different points of view. Thus payment by a buyer is consideration for the seller’s promise to deliver and can be described as a detriment to the buyer or as a benefit to the seller; and conversely delivery by a seller is consideration for the buyer’s promise to pay and can be described either as a detriment to the seller or as a benefit to the buyer. These statements relate to the consideration *for the promise of each party* looked at separately. For example, the seller suffers a ‘detriment’ when he delivers the goods and this enables him to enforce the buyer’s promise to pay the price. It is quite irrelevant that the seller has made a good bargain and so gets a benefit from the performance of the contract. What the law is concerned with is the consideration *for a promise* – not the consideration *for a contract*.”

4. In *Chitty on Contract*, 28th ed. (1999), the author points out that -

“Although consideration need not be adequate, it must be real, that is, capable of estimation in terms of value, ‘of some value in the eye of the law.’ This is one reason why there is no consideration for a promise made ‘in consideration of natural love and affection.’ ”

5. Following the above authority, if a person, out of affection for another, refrained from disclosing information that might be of material assistance in securing the prosecution or conviction of person for any arrestable offence, he would not commit an offence under section 91 of Cap. 221.

Security Bureau

April 2003