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Miss Betty Ma
Clerk to Bills Committee
Legislative Council
3/F Citibank Tower
3 Garden Road, Central
Hong Kong

Dear Miss Ma,

**Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007
Part 7 – “Wasted Costs” Provisions of
Costs in Criminal Cases Ordinance Cap 492**

I refer to the meeting of the Bills Committee on 18 March 2008.

In the light of the views of the Committee on Part 7 of the Bill, which introduces certain amendments into the Costs in Criminal Cases Ordinance Cap 492, we have given the submissions of the Bar and the Law Society further consideration.

Although the Administration cannot accept the Bar's primary position that amendments to Cap 492 are unnecessary, we have noted in particular the submission that the responsibilities of legal representatives in civil and criminal proceedings are significantly different and that the wasted costs provisions in each type of proceedings should be tailored to reflect that difference.

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In the circumstances, the Secretary for Justice proposes to move amendments to Part 7 to reflect the Bar's alternative position on the definition of "wasted costs".

The amendments would make it clear that for the wasted costs jurisdiction to be invoked, it would be necessary for the act or omission of the legal representative to be "seriously improper" or for there to have been undue delay or any other misconduct on the part of the representative or employee of a representative.

The definition of "wasted costs" would then be as set out in paragraph 12 of the Information Paper – LC Paper No. CB(2)1254/07-08(02). That is to say as follows :

“ “wasted costs” means any costs incurred by a party to the proceedings –

(a) as a result of –

(i) any seriously improper ~~or unreasonable~~ act or omission; or

(ii) any undue delay or any other misconduct ~~or default~~ on the part of any representative or any employee of a representative; or

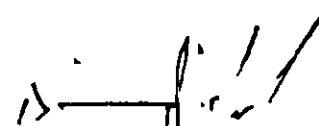
(b) which, in the light of any such act or omission, delay, or misconduct ~~or default~~ occurring after they were incurred, the court considers it is unreasonable to expect that party to the proceedings to pay.”

As you know the Chairman of the Committee has suggested that the Second Reading Debate of the Bill be resumed on 23 April 2008 and the Administration was preparing to follow that suggestion. I should be grateful, therefore if you would let me know as a matter of urgency whether the Bills

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Committee will require a further meeting to consider the proposal for an additional CSA in the above terms.

Yours sincerely,



(Ian Wingfield)
Solicitor General

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