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GOVERNMENT SECRETARIAT
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24 February 2010

Mr Bonny Loo
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Mr Loo,

**Proposed Code of Practice under Section 12A of the
United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)**

I refer to your letter dated 19 February 2010 regarding the proposed Code of Practice for the United Nations (Anti-Terrorism Measures) Ordinance ("UNATMO"). Our response to the issues raised is set out in the ensuing paragraphs seriatim –

Procedures Requiring Persons to Answer Questions or Furnish Information

- (a) While the Code of Practice is readily available in English and Chinese, free interpretation of the Code will be provided to any persons who are subject to section 12A order but do not read Chinese or English.
- (b) As set out in paragraph 10 of the Code, when necessary, an interpreter qualified for court purposes should be engaged to make a record of the interview in the language used by the interviewee.

Any requests or comments made by the interviewee will be interpreted by the interpreter and recorded in the interview record, such as requests for the presence of legal advisers, refreshment breaks and interpretation of the content of the Code to the interviewee.

- (c) We would like to clarify that special arrangements will be provided to interviewees who are or appear to be under the age of 16 or suffering from any form of disabilities. For avoidance of confusion, the Administration sees no difficulty in amending the Code by inserting the words "is or" after the words "If the interviewee" in paragraph 12 and making corresponding improvements to paragraphs 13 and 14 so that the first sentence of both will read "Where the interviewee is or appears to the authorized officer to be.....".
- (d) Paragraph 9 of the Code sets out the general provision that the interviewee, if he or she wishes, is allowed to have a barrister and/or solicitor to be present during the interview and to consult privately with the barrister and/or solicitor. The entitlement of the interviewee, who is a hearing or speech impaired person, to legal advice is covered by paragraph 9 while paragraph 14 merely repeats this entitlement. For avoidance of confusion, the Administration sees no difficulty in removing the words "or a barrister and/or a solicitor" in paragraph 14 of the Code.
- (e) Breaks for rest or other purposes are covered in paragraph 15 of the Code. For avoidance of confusion, the Administration sees no difficulty in removing the words "for refreshment" in the second sentence of paragraph 15.
- (f) For consistency sake, you suggested that the phrase "or appears to the authorized officer to be" immediately after the words "who is" in paragraph 20(a) and (b), and correspondingly paragraph 20(c) and (d). The Administration sees no difficulty in incorporating the suggested textual amendments to the Code of Practice.

Supervision and Complaints

- (g) Paragraphs 27 to 29 of the Code set out the procedures for handling complaints filed by interviewees against the authorized officers. Any follow-up action and investigation of the complaint will be

handled in accordance with the existing complaint mechanisms established under the relevant law enforcement agencies. The investigation outcome will be conveyed to the complainant upon the completion of the investigation.

Promulgation and Commencement of the Code

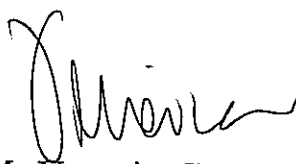
- (h) While the promulgation of the Code is subject to the approval of LegCo, it is not a piece of subsidiary legislation and should not be published as a legal notice.
- (i) A commencement clause in the Code is not necessary. The relevant law enforcement agencies are under an obligation to comply with the Code in the exercise of the powers and the discharge of the duties under section 12A of the UNATMO when section 12A commences operation.

Ancillary Matter

- (j) When the Code of Practice for the UNATMO is finalized and endorsed by LegCo, we will follow up to update the Code of Practice under the Organized and Serious Crimes Ordinance (Cap.455) to ensure procedural consistency.

Annex

The suggested changes in the Annex to your letter are mainly textual in nature. The Administration sees no difficulty in incorporating the suggested amendments to the Code.


(Ms Veronica Wong)
for Secretary for Security

c.c.

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