LC Paper No. CB(2)199/03-04(01)

Ref : CSO/ADM/CR 9/4/3222/85(01)

Date : 30th August 2003

Mr. Chan Siu Lun

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By Fax

c.c. : LegCo Panel on Administration of Justice & Legal Services
(Ref : CB2/PL/AJLS)

c.c. : Mr. Greg Torade, Hong Kong News Section, South China Morning Post

c.c. : 蘋果日報編輯(政治)

c.c. : 東方日報編輯部

c.c. : 明報政治組採訪主任

c.c. : 經濟日報政治版黃惠日小姐

Dear Sir,

The Member of Public's Comments on the Administration's Submission (dated 27th August 2003) regarding the review and amendment of section 18(3) of the Hong Kong Court of Final Appeal Ordinance, Cap. 484 ("the Ordinance") to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee

Thank you for the Director of Administration's reply letter of 27th August 2003 (headlined "Section 18(3) of the Hong Kong Court of Final Appeal Ordinance") saying that :

《Thank you for your letter dated 2 July 2003.

We note that you have raised again your earlier request that section 18(3) of the Hong Kong Court of Final Appeal Ordinance ("Ordinance") should be amended to provide for a further appeal avenue to vary, re-open or set aside the decision made by the Appeal Committee of the Court of Final Appeal ("CFA"). You have also restated that you have made 28 points regarding the subject. We have reviewed the issues raised again and believe that they could be categorized into the following issues :

(a) difference in the provisions governing the grant of special leave to appeal between the Judicial Committee of the Privy Council and the CFA ;

(b) case law regarding the hearing of a second petition by the Judicial Committee of the Privy Council ;

(c) number of CFA judges to hear and determine appeal against decision of the Appeal Committee ; and

(d) the way in which the Members of LegCo scrutinize the Hong Kong Court of Final Appeal Bill in 1995.

Having consulted, where appropriate, the Department of Justice and the Judiciary Administrator, I set out below the Administration's position on these issues as follows : -

(a) Difference in the provisions governing the grant of special leave to appeal between the Judicial Committee of the Privy Council and the CFA

Section 23(1) of the Ordinance provides that no appeal shall be admitted unless either (i) leave to appeal has been granted by the Court of Appeal ; or (ii) in the absence of such leave, leave has been granted by the Court of Final Appeal. Similarly, Rule 2 of the Judicial Committee (General Appellate Jurisdiction) Rules ("the Rules") Order 1982 provides that no appeal shall be admitted unless either (i) leave to appeal has been granted by the Court appealed from ; or (ii) in the absence of such leave, special leave to appeal has been granted by Her Majesty in Council.

There is no express provision that the Rules which allow decisions of the Judicial Committee to refuse special leave to appeal to be re-considered. The granting of special leave to appeal by the Judicial Committee is a matter of discretion and not a right (see the Privy Council's decision in Davis v. Shaughnessy [1932] AC 106).

(b) Case law regarding the hearing of a second petition by the Judicial Committee of the Privy Council

You have citied Vasquez v. The Queen [1994] 1 WLR 1304 as the authority to support your argument your argument that section 18(3) of the Ordinance should be amended to allow second petitions to the Appeal Committee. The Judicial Committee in that case had to consider two petitions for special leave by a defendant from the judgment of the Court of Appeal of Belize given on 17 September 1991 and by another defendant from the judgment of the same Court on 12 June 1991. Although the Judicial Committee considered two petitions by two defendants in two murder cases at the same time, there was no evidence from the case report that the Judicial Committee had indeed considered two petitions for special leave by each defendant.

(c) Number of CFA judges to hear and determine appeal against decision of the Appeal Committee

As mentioned in our previous letters and papers, the policy intention of having the Chief Justice and two permanent judges of the CFA, or three permanent judges of the CFA, to sit in the Appeal Committee, is that the decision of the Appeal Committee would represent in effect the majority view of the CFA. The policy intention is reflected in the Ordinance and is so complied with the operation of the Appeal Committee.

(d) The way in which the Members of LegCo scrutinize the Hong Kong Court of Final Appeal Bill in 1995

We note it is your personal opinion that LegCo was being rushed to scrutinize the Hong Kong Bill. The Appeal Committee has been operating well since its inception, and we have seen no evidence to suggest section 18(3) is defective, that it should be suspended from operation. Indeed, we are given to understand that the LegCo Panel on Administration of Justice and Legal Services holds similar view. We do not see a case to amend the section.

We hope that the above, together with all our previous correspondences and papers on the subject, have made our position and our rationale behind the relevant provision clear.》

In light of **my recent letters of 2nd July 2003 and 4th May 2003** (titled "*The Member of Public's Comments on the Administration's Submission (dated 28th June 2003) regarding the review and amendment of section 18(3) of the Hong Kong Court of Final Appeal Ordinance, Cap. 484 ("the Ordinance") to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee*" **and** "*Request for full comments on all the points*

raised in Mr. CHAN Siu-lun's latest submission dated 1st December 2003"respectively) **and my latest submission dated 1st December 2002** (titled "*Review and amendment of section 18(3) of the Ordinance to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee*") **together with its enclosures, I revert to your reply letter of 27th August 2003 as follows :**

1. I have already told you clearly in point 1 of my recent letter of 2nd July 2003,

   《It is plain my request is a review and amendment of s.18(3) of the Ordinance to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee.

   Accordingly, it lacks reasonable basis what you said in second paragraph of your reply letter :

   "we note that the issue you would like to raise remains to be your earlier request that s.18(3) of the Ordinance should be amended to provide for a further appeal avenue to vary, re-open or set aside the decision made by the Appeal Committee of the CFA".**》**

   There is no basis what you said in your reply letter dated 27th August 2003 again :

   "We note that you have raised again your earlier request that section 18(3) of the Hong Kong Court of Final Appeal Ordinance should be amended to provide for a further appeal avenue to vary, re-open or set aside the decision made by the Appeal Committee of the Court of Final Appeal".

2. As pointed out in point 2 of my recent letter dated 2nd July 2003,

   《It is also plain only two points (out of 28 points) in my latest submission dated 1st December 2003 are pertinent to appeal policy and the other 26 points are within policy areas of legislative policy, drafting policy and judicial avenue to apply for leave application to the CFA, which can gurantee legal rights of fair trial protected by the Basic Law and Bill of Rights.

   Accordingly, it lacks reasonable basis you have only managed to elaborate your view on "appeal avenue" (an issue of policy area) as referred to third paragraph of your reply letter and failed to explain your view on "legislative policy", "drafting policy" and "judicial avenue" to apply for leave application to the CFA, which can guarantee legal rights of fair trial protected by the Basic Law and Bill of Rights.**》**

   I wonder why you have reviewed the issues again but **failed to categorize all the relevant issues** apart from the 4 issues mentioned in your reply letter of 27th August 2003. Frankly speaking, **the said relevant issues ought to include :**

(i) Failure of the Administration to follow important steps of drafting listed out in "Legislative Drafting in Hong Kong" (2nd edition published by the Dept. of Justice) to draft clause 18(3) of the CFA Bill 1995, whose wording is same as section 18(3) of the Ordinance ;

(ii) Policy intention of the Appeal Committee explained by the Administration when the LegCo scrutinize the CFA Bill in 1995 ;

(iii) The Administration's policy in 1997 to amend section 18(3) of the Ordinance to improve its provisions in respect of the constitution of the Appeal Committee to hear applications for leave to appeal and solve the practical problems that have arisen in operating the CFA ;

(iv) The practices of the CFA to hear and determine leave application ever since July 1997 and the number of CFA judges (including the Chief Justice, 3 Permanent Judges and 12 Non-Permanent Hong Kong Judges) to hear and determine the leave application after section 18(3) of the Ordinance has been reviewed and amended to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee ;

(v) The practices of the CFA to refuse a re-listing to re-consider the leave application, which is different much from the practice of the Judicial Committee of Privy Council allowing special leave to appeal to be re-considered ;

(vi) Whether section 23(1) and 18(3) of the Hong Kong CFA Ordinance can reflect the practices of Judicial Committee of the Privy Council ;

(vii) The guarantee of legal rights of fair trial be protected by the Basic Law and Bill of Rights when considering the issues to review section 18(3) of the Ordinance ;

(ix) The view held by the LegCo Panel on Administration of Justice & Legal Services regarding review and amendment of section 18(3) of the Ordinance.

3. The **rationale to back up the proposed issues** include :

(a) Pursuant to section 42 (3) of the Ordinance, "The Registrar shall have and may

exercise and perform such jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law". **The practices of the CFA towards re-consideration of leave application** can be referred to extracted portion of my previous letter dated 20th June 2002 (titled "*Complaint against Hon Acting Registrar Queeny Au Yeung of the CFA, who refused to give any directions in the matters of procedure and practice as referred to the points raised in my recent letter of 11th May 2002 (titled "Application for directions given by Registrar in matters of procedure and practice")*") addressed to two members of the LegCo Panel on Administration of Justice & Legal Services - Hon Emily Lau Wai Hing and Hon Audrey Eu Yuet Mee as follow :

《---------- the Acting Registrar of the Court of Final Appeal said in her recent letter of 29th April 2002 that ----------,

which is not different much from previous letters of 14th & 18th August 2000, 23rd, 27th, October 2000, 17th, 21st & 27th November 2000, 1st, 6th, 22nd & 29th December 2000 , 9th, 16th, & 22nd January 2001, 1st February 2001 and 21st December 2001 written by the Ex-Acting Registrar of the Court of Final Appeal in respect of '***the application for leave to appeal has been dealt with. It will not be re-opened or reviewed***' saying that :

"The Appeal Committee had made its decision. That decision is final. Finality means that it cannot be re-opened, which is what an 'application for re-consideration' means." ;

"This is to acknowledge receipt of your letter dated 14 August 2000. As I have explained in my previous letter to you, the Appeal Committee has already heard and has already made its decision in relation to your application for leave to appeal to the Court of Final Appeal, in the circumstances, there is nothing I can do for you." ;

"Your letter dated 19 October 2000 addressed to the Chief Justice's clerk has been passed to me.

As I have explained in my previous letters 14 and 18 August 2000 the matters have been considered by the Appeal Committee. In the circumstances there is nothing further I can add." ;

"Your letter addressed to the Clerk to the Registrar of the Court of Final Appeal dated 23 October 2000 has been passed to me.

I am afraid that it would not be appropriate for the Clerk to answer any questions

relating to legal procedures. If you want legal advice, I suggest that you make an appointment at your local District Office to consult with a lawyer. The lawyers services are provided free of charge to citizens. The District Office nearest you should be the one located in Tung Yan Street, Kwun Tong. The telephone number there is 2341 6315." ;

"**The above captioned case has been dealt with by the Appeal Committee, and the Appeal Committee has decided on this case. Thus, we cannot accept your Notice of Motion (out of time) and Form B (out of time) for filing again.**" ;

"Your letter requesting leave to file dated 17 November 2000 must have crossed with my letter to you of even date.

As I explained in my letter, the case you seek to file is the same as FAM V 30 of 2000 which was already decided by the Appeal Committee.

In these circumstances we cannot accept your Notice of Motion (out of time) and Form B (out of time) for filing again." ;

"Perhaps you have not read my letter dated 21 November 2000 carefully, or perhaps I have not expressed myself clearly enough. If it is the latter, I apologise and will try and put the matter at its simplest.

FAM V 30 of 1999 was an appeal from CACV 171 of 1999, which was an appeal from HCPI 127 of 1999.

FAM V 30 of 1999 was determined by the Appeal Committee on 19 January 2000. Since it was determined by the Appeal Committee, the matter has been dealt with, and cannot be considered again.

The case that you seek to file is the same as the previous case, the same case or matter that was HCPI 127 of 1999, and CACV 171 of 1999 and FAM V 30 of 1999. That is why leave cannot be granted for you to file again what is in essence a matter that had been determined under the case number FAM V 30 of 1999." ;

"The contents of your letter dated 29 November 2000 are noted.

I have said all that I can say on the subject. Your application has been refused for the reasons previously referred to." ;

"Your letter dated 4 December 2000 addressed to the Hon Chief Justice has been passed to me. I have explained in my previous letters to you, **the decision of the Appeal Committee is final.**

In these circumstances I regret there is nothing further to say on the subject." ;

"Your letter dated 8 December 2000 addressed to the Hon Chief Justice has been passed to me.
As I have explained in many previous letters to you, your application was already decided by the Appeal Committee and it decision is final.
In these circumstances I regret there is nothing further to say on the subject." ;

"Thank you for your letter of 24 December 2000. **As I understand, the case has been heard and the Appeal Committee has made its decision. I do not find that the Court of Final Appeal has the right to entertain your application.**
It is not a matter of filing the motion out of time. The Appeal Committee has discharged its function. I think your application is misconceived." ;

"Your letter dated 4 January 2001 addressed to Mr. Christopher Chan has been placed before me.
There is nothing further that I can add to his letter to you dated 29 December 2000. As I have explained before, **the Appeal Committee's decision is final.** For this reason the Court will not entertain your application." ;

"Your letter dated 8 December 2000 addressed to the Hon Chief Justice has been passed to me.
As I have explained in many previous letters to you, your application was already decided by the Appeal Committee and its decision is final.
Since my letter to you dated 22 December 2000 I have again tried to explain that the **procedure is at an end.**
In these circumstances I regret there is nothing further to say on the subject." ;

"Your letter dated 19 January 2001 addressed to the Hon Chief Justice has been passed to me.
As I have explained in my previous letters to you, **your application was already decided the Appeal Committee and its decision is final.**
In these circumstances I regret there is nothing further to say on the subject." ;

"Your application was considered and dismissed by the Appeal Committee on 19 January 2000.The Appeal Committee's decision is final.
For the past few months I have made every possible effort to explain to you, either on

my own behalf or on the behalf of the Hon. Chief Justice that your application to the Court of Final Appeal is at an end.

In the circumstances I must inform you that this is my last word on the subject. **Your application is at an end**, so please do not expect any replies in the future on this subject." ; and

"Your letter dated 12 December 2001 together with enclosures has been considered. In that letter, you asked for advice on 'the legal procedure to submit an application to the Appeal Committee of the Court of Final Appeal requesting it to re-consider its determination ----------'.

Unfortunately **no advice on that subject can be proffered because the Appeal Committee will not re-consider any previous determination as section 18(3) of Cap. 484 provides that the decision of the Appeal Committee 'shall be final'. Since the Appeal Committee's decision is a final decision, the Appeal Committee cannot, by law re-consider or revisit its earlier determination.**

This is my 16th letter to you on the same subject. Please understand that I cannot repeatedly refer you to section 18(3) of the Hong Kong Court of Final Appeal Ordinance, Cap. 484.

This is my last word on this subject. If you write again requesting the Appeal Committee to re-consider its determination, please be advised that I will not take the time to respond." 》

(see enclosure 'Ex-2' of my latest submission dated 1st December 2002 (titled "Legislative Councillor Emily Lau Wai Hing's enquiry letters dated 23rd July 2002 and 19th Sept. 2002 (annexed with Mr. Chan Siu Lun's letters dated 13th & 6th Sept .2002, 20th June 2002 and 8th July 2002)")

(b) Relevant issue raised by LegCo Brief dated 15th June 1995 (Ref : CSO/ADM/SCR4/3222/85(95) Pt. 36 issued by the Director of Administration

《Implication

Since the LegCo Brief did not include clause 18 Appeal Committee of the Hong Kong CFA Bill, the **LegCo Members have to rely on other paper and report prepared by the Administration to scrutinize the Bill in detail.**

(see point 5 and enclosure "Ex-10" of my latest submission dated 1st December 2002)

(c) Relevant issue raised by the Information Note for Bills Committee to study the Hong Kong CFA Bill 1995

("Information Note for the Bills Committee to study the Hong Kong Court of Final Appeal Bill

(* This paper sets out the differences between the law governing the Judicial Committee of the Privy Council and the proposed legislation in respect of the Hong Kong Court of Final Appeal)

18. Appeal Committee

Hearings of petitions for leave to appeal are normally by three members of the Judicial Committee of the Privy Council

23. Leave to appeal

This is equivalent to R.2 of the Judicial Committee (General Appellate Jurisdiction) Rules Order, 1982. ---------- "

Implication

1. LegCo Members can only rely on this information note provided by the Administration to scrutinize clause 18 of the Hong Kong Court of Final Appeal Bill.
2. **This information note is correct in respect of**

" R.2 of the Judicial Committee (General Appellate Jurisdiction) Rules Order, 1982 (which stipulates 'No appeal shall be admitted unless either –

(a) leave to appeal has been granted by the Court appealed from ; or

(b) in the absence of such leave, special leave to appeal has been granted by Her Majesty in Council.')

is equivalent to clause 23(1) of the Hong Kong Court of Final Appeal Bill.")

(see point 6 and enclosure "Ex-11" of my latest submission dated 1st December 2002)

(d) Relevant issue raised by the Record of Meeting of the Bills Committee to study the Hong Kong CFA Bill 1995 held on 3rd July 1995 (at LegCo Paper No. 18/95-96)

("Clause 18

At the request of Members, the Administration would consider including a provision to provide for majority decision in the Appeal Committee."

Implication

Since the Administration pointed out in the information note for Bills Committee to study the Hong Kong Court of Final Appeal Bill that

"clause 18 is only different from the law governing the Judicial Committee of the Privy Council in respect of

'Hearing of petitions for leave to appeal are normally by three members of the Judicial Committee of the Privy Council'",

it is reasonable the Members may be satisfied with clause 18 (which is supposed to replace the corresponding law governing the Judicial Committee of the Privy Council). Therefore, instead of amending clause 18, the Members request the Administration to consider an extra provision to provide for majority decision in the Appeal Committee.》
(see point 7 and enclosure "Ex-12" of my latest submission dated 1st December 2002)

(e) Relevant issue raised by the Report of the Bills Committee to study the Hong Kong CFA Bill dated 13th July 1995 (at LegCo Paper No. : HB1182/94-95)

《* This paper reports on the deliberations of the Bills Committee to study the Hong Kong CFA 1995 and seeks Members' support to resume the Second Reading debate of the Bill on 26 July 1995.

Implication

The LegCo Members held only 9 **meetings within 5 weeks** to scrutinize the CFA Bill and completed a report immediately, which however did not include any comment on clause 18 of the Bill.

It is noted that **the Members were being rushed to scrutinize the Bill and did not comply with r.76(2) of the Rules of Procedure of the Legislative Council to scrutinize the Bill in detail.**》

(see point 8 and enclosure "Ex-13" of my latest submission dated 1st December 2002)

(f) Relevant issue raised by "Second Reading of the Hong Kong CFA Bill and Resumption of Debate on Second Reading which was moved on 14th June 1995" (adapted from "Official Record of Proceedings of the Hong Kong Legislative Council" dated 26th June 1995)

《Bills

Second Reading of the Bill

Hong Kong Court of Final Appeal Bill

Resumption of debate on Second Reading which was moved on 14 June 1995

Question on Second Reading proposed

Question on the motion proposed

MR MARTIN LEE : Mr President ---------- I am saying this because I feel, I **have felt throughout the deliberations at every meeting of the Bills Committee, that we were being rushed**. There were times that the Administration, and this happened very frequently, had to prepare papers for Members and they did a very good job. ---------- Mr Bob ALCOCK is here, and I will pay him this compliment. They have been working very hard to give us papers. ---------- We had no time to read them

very often. We had to consider them immediately, and the most notice we had, I suppose, would be about 24 hours. We struggled very hard under a very diligent Chairman, Mr Simon IP, and I have to say, Mr President, that after these nine meetings I cannot feel confident, in spite of my legal training, that we have covered every possible point with the sort of attention that a Bill of this nature deserves.
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Implication

The Bills Committee held only 9 meetings within 4 weeks to scrutinize the Court of Final Appeal Bill. It is no wonder one of the Members (Queen's Counsel) feels that "throughout the deliberations at every meeting of the Bills Committee that the Members were being rushed. ---------- after these nine meetings he cannot feel confident, in spite of his legal training, that the Members have covered every possible point with the sort of attention that a Bill of this nature deserves".》

(see point 9 and enclosure "Ex-14" of my latest submission dated 1st December 2002)

(g) Relevant issue raised by "Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 SI 1982/1676" (adapted from "Volume 5 Halisbury Statutory Instruments 1999 Issue")

《Implication

Since only a provision similar to s.23(1) of the Ordinance can be found in the R.2 of the Judicial Committee (General Appellate Jurisdiction) Rules Order, 1982 and a provision similar to s.18(3) of the Ordinance cannot be found in the said Rules, there **is no basis the Administration wrote in paragraph (6) of the letter dated 21 November 2001 in response to Mr. Chan Siu Lun's letter of 3 November 2001** (at LegCo Paper No. CB(2) 456/01-02(06)) as follow :

"Sections 23(1) and 18(3) of the Hong Kong Court of Final Appeal Ordinance reflect the practices of the Judicial Committee of the Privy Council".》

(see point 10 and enclosure "Ex-15" of my latest submission dated 1st December 2002)

(h) Relevant issue raised by Section 18-053 Further Petitions Seeking Leave of Ch. 18 The Judicial Committee of Privy Council and Appendix 34 Judicial Committee Acts 1833 to 1915 adapted from 'TAYLOR ON APPEAL" (written by Paul Taylor, Barrister) and Judgment of *Vasquez and O'Neil* [1994] 1 W.L.R. 1304

《**Ch. 18 The Judicial Committee of The Privy Council**

18-053. Further petitions seeking leave

If leave is refused, there is no bar to a further petition being lodged, other than if it seen as an abuse of process. A subsequent petition, is however, only likely to succeed if new grounds or fresh evidence are put forward
(A second petition was lodged in *Vasquez and O' Neil* [1994] 1 W.L.R. 1304).

Implication

Since a provision similar to s.18(3) of the Ordinance cannot be found in the Judicial Committee Acts 1833 to 1915 – the law governing the Judicial Committee of the Privy Council and there is no bar to a further petition lodged to seek leave to appeal to the Judicial Committee of the Privy Council (* a second petition was lodged in *Vasquez and O' Neil* [1994] 1 W.L.R. 1304, P.C.),

there is no basis the Administration did not base on the relevant common law and statute law to draft clause 18(3) of the Hong Kong Court of Final Appeal Bill and did not submit the relevant common law and statute law to Bills Committee for the LegCo Members' deliberation (when the Bill was scrutinized in 1995).》

(see point 11 and enclosure "Ex-16" of my latest submission dated 1st December 2002)

(i) Relevant issue raised by Ch. 38 Judgments adapted from "PHIPSON ON EVIDENCE" (15th edition edited by M.N. Howard, M.A., B.C.C. of Magdalen College, Oxford, Bencher of Gray's Inn ; a Recorder of the Crown Court, one of Her Majesty's Counsel) and Judgment of *D.S.V. Silo-und Verwaltungsgesellschaft mb H v. Senar (Owners), The Senar (No. 2)* [1985] 1 W.L.R. 490

《"Finality does not depend on whether a decision can be appealed. A decision is final if it 'is one that cannot be varied, reopened or set aside by the court that delivered it or any other court of co-ordinate jurisdiction although it may be subject to appeal to a court of higher jurisdiction'.

(*D.S.V. Silo-und Verwaltungsgesellschaft mb H v. Senar (Owner), The Sennar (No. 2)* [1985] 1 W.L.R. 490 at 494B-C, HL, per Lord Diplock)"

Implication

Since **the principle of finality was made clear by Lord Diplock in the judgment of** *D.S.V. Silo-und Verwaltungsgesellschaft mb H v. Senar (Owner), The Senar (No. 2)* [1985] 1 W.L.R. 490 at 494B-C, HL,

there is no basis the Administration did not base on the common law to draft clause 18(3) of the Hong Kong Court of Final Appeal Bill 1995 and did not submit the relevant common law to the Bills Committee for the LegCo Memebrs' deliberation (when the Bill was scrutinized in 1995)》

(see point 12 and enclosure "Ex-17" of my latest submission dated 1st December 2002)

(j) Relevant issue raised by Ch. 2 The Drafting Process and Preparation of Drafting Instructions – CheckList adapted from "LEGISLATIVE DRAFTING IN HONG KONG (2nd edition published by the Dept. of Justice)

《"2. The Drafting Process

How is legislation drafted

2.4 The uninitiated may tend to think of legislative drafting principally in terms of writing. In fact, the writing part is only one step in the process – usually the step to which least time is allowed. **There are a number of other equally important steps in the drafting process.**

2.5 The first thing that a drafter must do on receipt of instructions to draft a piece of legislation is to make sure that he, or she has a thorough understanding of the proposal. ----------

2.6 **The next step is for the drafter to make himself, or herself as familiar as possible with all the law that may affect the proposal. All relevant common law and statute law must be studied.** Textbooks and international conventions may need to be consulted.----------

2.7 **After the drafter has become as familiar as possible with all the relevant law, the proposal must then be subjected to a thorough analysis to ensure that it is conceptually sound and that there are no legal impediments to its implementation.** Only after completing these three essential steps will drafting begin in earnest.

2.8 ---------- A step may often need to be repeated as the draft evolves and, very often, a drafter will begin with a rough draft or outline of the proposed legislation in order to better direct the required research and analysis. ----------

2.9 After the initial stages have been completed, the drafting process normally consists of the drafter producing a series of drafts for consultation, during the course of which the original proposals are refined and perhaps even redefined. Drafts are also checked internally at least once by another drafter in addition to final clearance by the Law Draftsman before the 'blue' or final draft is released." ;

"Preparation of Drafting Instructions - CheckList

3. Detailed Instructions

(h) **retrospective provisions** required ;"

Implication

The important steps to draft law outlined in 'LEGISLATIVE DRAFTING IN HONG KONG' published by the Dept. of Justice are relevant authorities to review and amend s.18(3) of the Ordinance.)

(see point 13 and enclosure "Ex-18" of my latest submission dated 1st December 2002)

(k) Relevant issue raised by sections 16(4), 18 and 23(1) of the Ordinance, "Judges of the CFA", "caseload of the CFA (for Applications for leave to appeal from High Court) civil and criminal) and Substantive appeals from the High Court (civil and criminal), "List of judgments of Miscellaneous Proceedings (civil) in 1997, 1998, 1999, 2000 ,2001 and 2002" and "List of Judgments of Final Appeal (civil) in 1997, 1998, 1999, 2000, 2001 and 2002" downloaded from the homepage of the Judiciary on the internet

(Implication

In compliance with s.18(2B) and s.16(4) of the Ordinance, the **number of Applications for Leave to Appeal (civil) or Miscellaneous Proceedings (civil), heard by one non-permanent Hong Kong judge** and two permanent judges in 1997, 1998, 1999, 2000, 2001 & 2002 are 12 and

the **number of Final Appeal (civil) heard by one to two non-permanent Hong Kong judges**, one oveaseas judges and two to one permanent judges in 1997, 1998, 1999, 2000, 2001 & 2002 are 42.

This implies that **the number of non-permanent Hong Kong judge are flexible in the leave application and the Final Appeal and this is decided by the Chief Justice case by case**.

Accordingly, **there should be sufficient number of Court of Final Appeal judges** (including Chief Justice, 3 permanent judges and 12 non-permanent Hong Kong judges) **to hear and determine the leave application after s.18(3) of the Ordinance has been reviewed and amended to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee.**

It is therefore ungrounded the Administration wrote in paragraph (7) of the letter dated 21 November 2001 in response to Mr. Chan Siu Lun's letter of 3 November 2001 (at LegCo Paper No. CB(2) 456/01-02(06)) as follow :

"At present, an appeal shall be heard and determined by the CFA comprising the three permanent judges in addition to the Chief Justice and a non-permanent judge. Section 18(1) of the Ordinance provides that an Appeal Committee shall consist of the Chief Justice and two permanent judges or three permanent judges. If there were to be a further appeal against a decision of the Appeal Committee, there would be either insufficient permanent judges to sit on the CFA or insufficient permanent judges to sit

on the Appeal Committee to hear that further appeal, having regard to the principle of natural justice.")

(see point 14 and enclosure "Ex-19" of my latest submission dated 1st December 2002)

(l) Relevant issue raised by "Hong Kong CFA (Amendment) (No. 3) Ordinance 1997" (adapted from Legal Supplement No. 1 of the Government of the HKSAR Gazette) and "Speech delivered by Chief Secretary for Administration in Second Reading of the Hong Kong CFA (Amendment) (No. 3) Bill 1997 (adapted from Official Record of Proceedings of the Provisional Legislative Council dated 10th Sept. 1997)

("Appeal Committee

Section 18 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is amended –

(a) in subsection (2) by adding after 'appeal' –

', including the power of the Court to certify under section 32(3),' ;

(b) by adding –

'(2A) No judge shall sit as a member of the Appeal Committee on the hearing and determination of any application in proceedings incidental or preliminary to –

(a) an appeal from a judgment or order made by him or by a court in which he was sitting as a member ;

(b) an appeal against a conviction before him or a sentence passed by him ; or

(c) any appeal in respect of which an application for leave to appeal or an application for a certificate under section 32(2) has been refused or declined by him or by a court in which he was sitting as a member.

(2B) **Where a sufficient number of permanent judge is not available for any cause to sit on the Appeal Committee to hear and determine any application the Chief Justice shall nominate a non-permanent Hong Kong judge to sit in place of a permanent judge.**" ; and

"Bill

First Reading of Bill

HONG KONG COURT OF FINAL APPEAL (AMENDMENT) (NO. 3) BILL 1997

Second Reading of Bill

HONG KONG COURT OF FINAL APPEAL (AMENDMENT) (NO. 3) BILL 1997

CHIEF SECRETARY FOR ADMINISTRATION :

---------- I move that the Hong Kong Court of Final Appeal (Amendment) (No. 3) Bill 1997 be read the Second time. **The Bill aims to amend the Hong Kong Court of Final Appeal Ordinance (Cap. 484) to improve its provisions in respect of the constitution**

of the Appeal Committee to hear applications for leave to appeal.

Section 18 of the Ordinance, on the other hand, provides for the constitution of an Appeal for hearing and determining applications for leave to appeal. It provides that an Appeal Committee shall consist of either the Chief Justice and two permanent judges nominated by the Chief Justice, or three permanent judges nominated by the Chief Justice. However, there is no express prohibition against bias by predetermination in this section.

The common law rule against bias by predetermination should apply to both the substantive hearings of appeals and applications for leave to appeal. As in the case of substantive hearings of appeals, it would be inappropriate for a judge to sit on an Appeal Committee if he has previously rejected the application, or if the judgment or order at issue was made by him or by a court of which he was a member.

We therefore propose to amend the Ordinance to apply expressly the common law rule against bias by predetermination to the hearing and determination of any application by the Appeal Committee. As the proposed exclusion from the Appeal Committee of judges who have a previous involvement with the case may mean that there are insufficient permanent judges to sit on the Committee, an additional amendment has to be made to provide that where a sufficient number of permanent judges is not available for any cause to sit on the Appeal Committee, the Chief Justice shall nominate a non-permanent Hong Kong judge to sit in place of a permanent judge. These two amendments mirror the provisions in sections 16(4) and 16(8) of the Ordinance.

---------- the Bill aims to solve the practical problems that have arisen in the light of the Judiciary's practical experience in operating the Court since its establishment. The Bill is an essential and technical one, and I commend it to Honourable Members for early passage into law."

Implication

Section 18 of the Ordinance has been amended in 1997 to improve its provisions in respect of the constitution of the Appeal Committee to hear applications for leave to appeal and solve the practical problems that have arisen in operating the Court of Final Appeal. This aim can also be applied to amend s.18(3) of the Ordinance to restore the judicial avenue to vary, re-open or set aside the decision made by the

Appeal Committee.》

(see points 15 and 16 and enclosures "Ex-20' & "Ex-21" of my latest submission dated 1st December 2002)

(m) Relevant issue raised by Bills Committee's Reports dated 25th April 2002 and 14th May 2002 on Hong Kong CFA (Amendment) Bill 2002 (at LC Paper No. CB (2) 1705/01-02 and CB(2) 1928/01-02)

《Implication

The Bills Committee on Hong Kong CFA (Amendment) Bill 2001 held 4 meetings within 8 months to scrutinize the Bill and prepared two reports. However, the Bills Committee on Hong Kong Court of Final Appeal Bill held 9 meetings within 4 weeks to scrutinize the Bill, which is much longer and complex than the CFA (Amendment) Bill 2001.》

(see point 25 and enclosure "Ex-30" of my latest submission dated 1st December 2002)

(n) Relevant issue raised by an article headlined 『版權新例欠清晰擬修改「議員承認走漏眼、當年著眼盜錄忽略剪報」』(轉載自 2001 年 10 月 4 日明報) and Legal Service Division's Report dated 2nd May 2001 on Copyright (Suspension of Amendments) Bill 2001 (at LC Paper No. LS 90/00-01)

《『自由黨主席田北俊建議，政府應主動修例，解決無論機構或個人複印剪報構成刑事罪行的情況，否則該黨提出私人修訂草案。他批評，新例條文不清晰，不切實際，混亂及擾民，承認立法會通過有關新例時有「走漏眼」，議員及政府也要承擔責任。

翻查修訂《*版權條例*》的草案委員會會議紀錄中，不難發現條例修訂過程中，無論政府及議員的著眼點，均在打擊戲院內盜錄行爲，及明確指出商業機構不可使用盜版軟件，鮮有提及影印剪報所帶來的問題及影響。

政府於九九年初提出修例的要求，立法會於去年六月成立《*2000 年知識產權(雜項)條例*》草案委員會。委員會共有成員五名，主席爲民主黨議員單仲偕，成員包括已離任的議員夏佳理、馬逢國，現任議員許長青、楊耀忠。

議員田北俊指政府當時急於推出法例，要求立法會盡快通過，以便打擊盜版行爲。草案委員會合共只舉行了三次會議，全部於六月份的一個月內完成。

當時議員的集中點，都放在戲院內盜錄，---------- 但會議紀錄顯示，除了楊耀忠曾質疑複印數目的「合理範圍」定義外，只有夏佳理議員關注到政府部門聘用剪報服務的合法性，私營機構及市民影印剪報方面，卻完全沒有提及。立法會隨即於六月一致通過上述法例。諷刺的是，政府文件指出希望新例有助創意蓬勃增長，配合本港長遠經濟發展，未料到最終實施之際，卻已爲工商界帶來極大的困惑及混亂。』；

"---------- After commencement of the Amendment Ordinance, the Administration realized that certain criminal provisions in the Ordinance had caused worries and inconvenience to the community. **As an interim measure, the Administration proposed to suspend the application of the Amendment Ordinance to the criminal provisions in the Ordinance subject to certain exceptions.** ---------- "

Implication

The Administration's proposal to suspend the application of certain provisions of an Ordinance (as a result of Members' negligent scrutiny on certain provisions of the Ordinance's draft Bill) is a valid approach to solve the practical problems that have arisen in operating the CFA such as the defective section 18(3) of the Ordinance which became law as a result of poor legislation and cannot guarantee the legal rights of fair trial protected by the Basic Law and the Bill of Rights 》

(see point 26 and enclosure "Ex-31" of my latest submission dated 1st December 2002)

(0) Relevant issue raised by Ch. 10 Rights, Freedom and Social Policies adapted from Hong Kong's New Constitutional Order – The Resumption of Chinese sovereignty and the Basic Law, 2nd edition (written by Prof. Yashi Ghai)

《"Legal rights

The ***Basic Law*** guarantees a number of rights in relation to the legal system. Apart from establishing an independent judiciary and ensuring the autonomy of the courts regarding their powers and procedures, the **Basic Law provides access to the legal system.** ---------- More specifically **the right to a fair trial without delay and the presumption of innocence are guaranteed** (*article 87 of the Basic Law*) ---------- The **Basic Law protects the access to courts and lawyers for civil purposes** (*article 35*), **the rights of litigants to civil proceedings** (*article 87*), and the right to institute legal proceedings and seek judicial remedies against the acts of the executive authorities and their personnel (*article 35*). The government is obliged to act in accordance with the law (*article 64*).

The rights in respect of the legal process are set out in greater detail in the Bill of Rights. It secures various rights to a person who is arrested, including being brought promptly before a court and the grant of bail. ---------- **There is right to a public trial by an impartial court** (*article 10*). There is protection against the retrospectivity of criminal offences or penalties (*article 12*). **These provisions would no doubt be read into the *Basic Law* through *article 87*, with its general requirement of 'fair trial'.**

The Bill of Rights also protects legal rights in civil matters. Apart from the right to have one's own counsel, '***everyone should be entitled to a fair and public hearing by a competent and independent and impartial tribunal established by law***' '***in determination of his rights and obligations in suit of law***' (*article 10*). These rights are effective covered in ***Basic Law***, and arguably they are broader than in the Bill of Rights, for the expression 'suit at law' has been often interpreted elsewhere as being restrictive to suits involving issues under private as opposed public law, ---------- ")

(see point 27 and enclosure "Ex-32" of my latest submission)

(p) Relevant issue raised by point 28 of my latest submission dated 1st December 2002

《Implication

The solid proof shown on P.22-33 strongly suggests that the existing arrangement as specified in the Hong Kong CFA Ordinance cannot provide adequate safeguard to ensure fair trial by judges of high standing and there is necessity to review and amend s.18(3) of the Ordinance to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee, otherwise legal rights of fair trial protected by the Basic Law and Bill of Rights cannot be guaranteed. This would definitely hurt the high reputation of the rule of law in the HKSAR and demolish the public confidence in fairness of our legal system.》

4. **My comments on the Administration's position and rationale behind the 4 issues being categorised in your reply letter dated 27th August 2003** are :

i. The reply letters written by the Acting Registrars of the CFA as referred to item 3(a) above strongly suggest that section 18(3) of the Ordinance expressly restricts the power of discretion exercised by the top court to reconsider the leave application. However, there is no express provision that Rule 2 of the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982.

ii. As pointed out in item 3(g) above and 5th paragraph of my recent letter dated 4th May, 2003,

"Since only a provision similar to section 23(1) of the Ordinance can be found in R.2 of the Judicial Committee (General Appellate Jurisdiction) Rules Order, 1982 a provision similar to section 18(3) of the Ordinance cannot be found in the said Rules of the Judicial Committee, there is no basis the Administration wrote in paragraph (6) of the letter dated 21 November 2001 in response to Mr. Chan Siu

Lun's letter of 3 November 2001 (at LegCo Paper No. CB (2) 456/01-02(06)) :
'Sections 23(1) and 18(3) of the Hong Kong CFA Ordinance reflect the practices of the Judicial Committee of the Privy Council'.

However, I note you have not clarified the Administration's position on the above point as referred to your reply letters of 20th January 2003, 28th June 2003 and 30th August 2003.

Accordingly, it lacks reasonable basis what you wrote at the end of your latest letter :

"all our previous correspondences and papers on the subject have made our position and our rationale behind the relevant provision clear".

iii. As pointed out by the author of "TAYLOR ON APPEALS" (Mr. Paul Taylor (Barrister)) in section 18-053 Further Petitions Seeking Leave of Ch. 18 The Judicial Committee of Privy Council,

"**If leave is refused, there is no bar to a further petition being lodged.**
(A second petition was lodged in *Vasquez and O'Neil* [1994] 1 W.L.R. 1304)"

I agree with the findings of Mr. Paul Taylor, (Barrister) for the following reasons :

(a) At 1316E-F, the Judicial Committee ruled that

"It only remains to deal with the matter of costs. When granting to the defendants special leave to appeal as poor persons on 27 October 1992 the customary recommendation was made that funds be made available by the Belize Government for the conduct of the appeals. ----------".

This strongly suggests that the special leave to appeal was granted to the defendants Dean Edward Vasquez and Catalino O'Neil on the same day and

(b) At 1306F, it is noted that

"APPEALS (Nos. 8 and 9 of 1993) with special leave by the defendant Dean Edward Vasquez, from the Court of Appeal of Belize given on 17 September 1991, ---------- and by the defendant, Catalino O'Neil, from the judgment of the Court of Appeal of Belize given on 12 June 1991, ----------"

(c) Since the judgments appealed from were given on 12 June 1991 and 17 September 1991 respectively and the special leave to appeal was granted to the defendants on 27 October 1992 and Rule 5 of the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 Time for lodging petition ("which stipulates "A petition for special leave to appeal shall be lodged with the least possible delay after the date of the judgment from which leave to appeal is sought" and a provision similar to section 18(3) of the Hong Kong CFA Ordinance cannot be found in the said Rules Order 1982 and the Judicial

Committee Acts 1833 to 1915 – the law governing the Judicial Committee of the Privy Council, it is possible the defendants have lodged petitions for special leave until they were granted special leave to appeal given that there is no express provision that the statute law allows decisions of the special leave made by the Judicial Committee to refuse special leave to appeal to re-open or re-consider the petitions for special leave.

iv. As pointed out in items 3(b), (c), (d), and (e),

"the Administration has not made any clear explanation on the policy intention of section 18 of the CFA Ordinance 1995".

However, as pointed out in item 3(l) above, the Administration in 1997 has made clear the policy intention of section 18 of the CFA Ordinance :

"Section 18 of the Ordinance, on the other hand, provides for the constitution of an appeal for hearing and determining applications for leave to appeal. It provides that an Appeal Committee shall consist of either the Chief Justice and two permanent judges nominated by the Chief Justice, or three permanent judges nominated by the Chief Justice. However, there is no express prohibition against bias by predetermination in this section.

The common law rule against bias by predetermination should apply to both the substantive hearings of appeals and applications for leave to appeal. As in the case of substantive hearings of appeals, it would be inappropriate for a judge to sit on an Appeal Committee if he has previously rejected the application, or if the judgment or order at issue was made by him or by a court of which he was a member.

We therefore propose to amend the Ordinance to apply expressly the common law rule against bias by predetermination to the hearing and determination of any application by the Appeal Committee. As the proposed exclusion from the Appeal Committee of judges who have a previous involvement with the case may mean that there are insufficient permanent judges to sit on the Committee, an additional amendment has to be made to provide that where a sufficient number of available for any cause to sit on the Appeal Committee, the Chief Justice shall nominate a non-permanent Hong Kong judge to sit in place of a permanent judge. These two amendments mirror the provisions in sections 16(4) and 16(8) of the Ordinance."

Also, as pointed in item 3(k) above and paragraph 3(ii) in my recent letter of 2nd July 2003,

《Implication

In compliance with s.18(2B) and s.16(4) of the Ordinance, the **number of Applications for Leave to Appeal (civil) or Miscellaneous Proceedings (civil), heard by one non-permanent Hong Kong judge** and two permanent judges in 1997, 1998, 1999, 2000, 2001 & 2002 are 12 and

the **number of Final Appeal (civil) heard by one to two non-permanent Hong Kong judges**, one oveaseas judges and two to one permanent judges in 1997, 1998, 1999, 2000, 2001 & 2002 are 42.

This implies that **the number of non-permanent Hong Kong judge are flexible in the leave application and the Final Appeal and this is decided by the Chief Justice case by case**.

Accordingly, **there should be sufficient number of Court of Final Appeal judges** (including Chief Justice, 3 permanent judges and 12 non-permanent Hong Kong judges) **to hear and determine the leave application after s.18(3) of the Ordinance has been reviewed and amended to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee.** ---------

Therefore, it is ungrounded **the Administration wrote in paragraph (7) of the letter dated 21 November 2001 in response to Mr. Chan Siu Lun's letter of 3 November 2001** (at LegCo Paper No. CB(2) 456/01-02(06)) as follow :

"At present, an appeal shall be heard and determined by the CFA comprising the three permanent judges in addition to the Chief Justice and a non-permanent judge. Section 18(1) of the Ordinance provides that an Appeal Committee shall consist of the Chief Justice and two permanent judges or three permanent judges. If there were to be a further appeal against a decision of the Appeal Committee, there would be either insufficient permanent judges to sit on the CFA or insufficient permanent judges to sit on the Appeal Committee to hear that further appeal, having regard to the principle of natural justice."

Accordingly, **it lacks reasonable basis** what you wrote in 3rd & 4th paragraphs of your reply letter dated 28th June 2003 as follows :

"---------- Having regard to the principles of natural justice, non-permanent judges have to be appointed in place of the three permanent judges, and hence the CFA would comprise four non-permanent judges and only one judge out of the Chief

Justice and three permanent judges. This represents a departure in the composition of the CFA from the existing position and what is envisaged in the Ordinance to be its usual composition."; and

"As you may note, the above positions have already been set out in our paper submitted to the Panel on 13 September 2001, and in our letter dated 21 November 2001, we do not consider that there are any additional points which may affect our views."》

It is therefore reasonable to conclude that you have **no grounds to claim the Administration's position on issue (c) Number of CFA judges to hear and determine appeal against decision of the Appeal Committee** as follows :

"As mentioned in our previous letters and papers, the policy intention of having the Chief Justice and two permanent judges of the CFA, or three permanent judges of the CFA, to sit in the Appeal Committee, is that the decision of the Appeal Committee would represent in effect the majority view of the CFA. The policy intention is reflected in the Ordinance and is so complied with in the operation of the Appeal Committee."

iv. As pointed in items 3(f), 3(n) and 3(p) above,

【Relevant issue raised by "Second Reading of the Hong Kong CFA Bill and Resumption of Debate on Second Reading which was moved on 14th June 1995" (adapted from "Official Record of Proceedings of the Hong Kong Legislative Council" dated 26th June 1995)

《Bills

Second Reading of the Bill

Hong Kong Court of Final Appeal Bill

Resumption of debate on Second Reading which was moved on 14 June 1995

Question on Second Reading proposed

Question on the motion proposed

MR MARTIN LEE : Mr President ---------- I am saying this because I feel, I **have felt throughout the deliberations at every meeting of the Bills Committee, that we were being rushed**. There were times that the Administration, and this happened very frequently, had to prepare papers for Members and they did a very good job. ---------- Mr Bob ALCOCK is here, and

I will pay him this compliment. They have been working very hard to give us papers. ---------- We had no time to read them very often. We had to consider them immediately, and the most notice we had, I suppose, would be about 24 hours. We struggled very hard under a very diligent Chairman, Mr Simon IP, and I have to say, Mr President, that **after these nine meetings I cannot feel confident, in spite of my legal training, that we have covered every possible point with the sort of attention that a Bill of this nature deserves. ----------》】**;

【Relevant issue raised by an article headlined 『版權新例欠清晰擬修改「議員承認走漏眼、當年著眼盜錄忽略剪報」』(轉載自 2001 年 10 月 4 日明報) and Legal Service Division's Report dated 2nd May 2001 on Copyright (Suspension of Amendments) Bill 2001 (at LC Paper No. LS 90/00-01)

《Implication

The Administration's proposal to suspend the application of certain provisions of an Ordinance (as a result of Members' negligent scrutiny on certain provisions of the Ordinance's draft Bill) **is a valid approach to solve the practical problems that have arisen in operating the CFA** such as the defective section 18(3) of the Ordinance which became law as a result of poor government legislation and cannot guarantee the legal rights of fair trial protected by the basic Law and the Bill of Rights.**》】**; and

【Relevant issue raised by point 28 of my latest submission dated 1st December 2002

《Implication

The solid proof shown on P.22-33 strongly suggests that the existing arrangement as specified in the Hong Kong CFA Ordinance cannot provide adequate safeguard to ensure fair trial by judges of high standing and there is necessity to review and amend section 18(3) of the Ordinance to restore the judicial avenue to vary, re-open or set aside the decision made by the Appeal Committee, otherwise legal rights of fair trial protected by the Basic Law and Bill of Rights cannot be guaranteed. This would definitely hurt the high reputation of the rule of law in the HKSAR and demolish the public confidence in the fairness of our judicial system.**》】**

Also, I have listened to the audio records of the meetings of the Panel on Administration of Justices and Legal Services held on 26th November 2001 and 24th February 2003 to discuss the Administration's papers dated Sept. 2001, 21st

November 2001 and 20th January 2003, I note **the Panel members, who have constitutional duties to comply with Article 73 of the Basic Law to raise questions on the work of the government, were unable to give any comments on the said Administration's papers regarding review and amendment of section 18(3) of the Ordinance.**

It is therefore reasonable to conclude that you **have no grounds to claim the Administration's position on issue (d) The way in which the Members of LegCo scrutinize the Hong Kong CFA Bill in 1995** as follows :

"We note it is your personal opinion that LegCo was being rushed to scrutinize the Hong Kong CFA Bill. The Appeal Committee has been operating well since its inception, and we have seen no evidence to suggest section 18(3) is defective, that it should be suspended from operation. Indeed, we are given to understand that the LegCo Panel on Administration of Justice & Legal Services holds similar view. We do not see a case to amend the section.

We hope that the above, together with all our previous correspondences and papers on the subject, have made our position and our rationale behind the relevant provision clear."

Thank you for your kind attention. I am looking forward to your kind reply on the outstanding issues raised in my latest submission dated 1st 2002 and comments on the points raised in this letter.

Yours faithfully,

CHAN SIU LUN
(Member of the Public)