

DoJ will not lodge appeal against decision on criminal contempt proceedings

In response to media enquiries, a spokesman for the Department of Justice said the following today (September 15):

Mr Justice Chow, by a Decision delivered on September 1 (the Decision), brought to an end the criminal contempt proceedings (HCMP 488, 490 to 492, 494 and 495 to 506/2015) commenced by the Secretary for Justice (SJ) against 17 respondents in respect of the execution of an injunction order granted in an earlier action (HCA 2086/2014). The SJ has considered the desirability of lodging an appeal, as the Decision highlighted the existence of various legal issues (including the correct interpretation of the relevant statutory provisions, the possible inconsistencies amongst different statutory provisions, and the Court's jurisdiction in contempt proceedings) which require clarification by the Court of Appeal (or even the Court of Final Appeal). However, having considered all the relevant circumstances, the SJ has decided not to appeal against the Decision. Instead, the SJ will make fresh applications for leave to commence contempt proceedings against the 17 said persons so that the question of their liabilities for criminal contempt (if any) can be decided as soon as possible.

The SJ's role in respect of criminal contempt proceedings differs from that in respect of ordinary criminal prosecutions. Instead of prosecuting an accused on behalf of the Hong Kong Special Administrative Region, the SJ's role in criminal contempt proceedings is to assist the Court in a capacity similar to an "amicus curiae" by bringing to the Court's notice matters which he considers the Court shall be informed in the interests of the administration of justice, so that the Court can decide whether or not to punish the persons involved for contempt.

In the present case, lodging an appeal can achieve the

aim of clarifying the legal issues. However, such a course will have the effect of deferring the final determination of the contempt proceedings against the 17 said persons for a considerable period of time. Balancing all the relevant considerations, the SJ took the view that the overall public interest, including the safeguarding of the administration of justice and expeditious disposal of the matters, can be best served by making fresh applications instead of appealing against the Decision.

Notwithstanding the decision not to appeal in the present case, the Department of Justice may on future appropriate occasion(s) seek the Court's determination on the said legal issues (i.e. those issues including the correct interpretation of the relevant statutory provisions, the possible inconsistencies amongst different statutory provisions, and jurisdiction of the Court in contempt proceedings).

Ends/Tuesday, September 15, 2015