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22 February 2002

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Total no. of page(s) : 4

(Attn : Mr Michael Scott
Senior Assistant Solicitor General)

Dear Mr Scott,

Statute Law (Miscellaneous Provisions) Bill 2001

I am scrutinizing the above Bill with a view to advising Members on the legal and drafting aspects. I shall be grateful if you would clarify the following :

Part III Compensation Order

Please let me have for reference the repealed section 72 of the Criminal Procedure Ordinance (Cap. 221) referred to in paragraph 5 of the LegCo Brief.

Please also explain why section 7 is deemed to have come into operation on 17 February 1997 under Clause 2 of the Bill.

Part V Marital rape and related sexual offences

Would the Administration clarify whether the law relating to those sexual offences in Part XII of the Crimes Ordinance (Cap. 200) to which no amendment has been proposed would not be affected by the introduction of the definition of "unlawful sexual intercourse" and "consent" in the proposed section 117 (1B) and (1C)?

Under section 117, a person does an "unlawful sexual act" if that person commits buggery or act of gross indecency with a person of the opposite sex with whom that person may not have lawful sexual intercourse. What are the implications of the amendments on the law relating to non-consensual buggery within marriage and non-consensual act of gross indecency within marriage?

Kindly confirm that the reference to "unlawful sexual act" in paragraph 13 of the LegCo Brief should be "unlawful sexual intercourse".

Has the Administration considered the need for consequential amendment to the Schedule of the Crimes Ordinance (conviction for offences other than charged under section 149)?

Part VII Power of Court to order repayment of deposit

Paragraph 19 of the LegCo Brief states that the courts in New South Wales, Australia have an identical power as the discretionary power in the UK under section 49(2) of the Law of Property Act, 1925. Certain differences are noted after comparing the text of section 55 of the New South Wales Conveyancing Act 1919 ("NSW Act") with that of the UK Act. Please clarify :

- (a) whether the Administration would consider including an express provision similar to section 55(1) and (2) of the NSW Act where specific performance of a contract would not be enforced against the purchaser by the court by reason of a defect in the vendor's title;
- (b) whether the court has any power to order repayment of deposit with interest thereon (similar to section 55(2A) of the NSW Act);
- (c) whether the Administration would consider including provision similar to section 55(3) of the NSW Act where the court has the power to declare and enforce a lien on the property in respect of the payment ordered;
- (d) whether there is any need for a transitional provision in relation to applications made to the court under section 12 of the Conveyancing and Property Ordinance (Cap. 219) prior to the commencement of the amendment.

Part IX **The Hong Kong Examinations Authority**

Clause 32 is a transitional provision for the Secretary of the Hong Kong Examinations Authority in relation to any instrument, contract, legal proceeding in force or pending before the commencement date. Has the Administration considered the need for a similar transitional provision for the Authority itself?

Part X **"Non-immunity" clauses**

Please clarify whether section 2 of Schedule 1 of the Occupational Deafness (Compensation) Ordinance (Cap. 469) needs to be amended.

Under the present Bill, the proposed amendments under Part X would come into operation on the day on which the Bill is published in the Gazette as an Ordinance. In the previous adaptation bills, the amendments proposed would be deemed to have come into operation on 1 July 1997, subject to Article 12 of the Hong Kong Bill of Rights set out in Part II of the Hong Kong Bill of Rights Ordinance (Cap. 383). Would the Administration consider a similar commencement date for Part X, or would the Administration prefer to rely on section 2 of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1) for construction of the word "Crown" on and after 1 July 1997?

Part XI **Tertiary Institutions**

Clause 53 of the Bill proposes to amend section 8(1)(e) of The Hong Kong Institute of Education Ordinance (Cap. 444) by adding "from among their member" after "elected". Would it be more accurate to add the phrase "from among their number" instead? Please refer to Clause 77(a)(v) of the Bill as well as section 10(1)(c) of Cap. 1075, section 1(l) of Statute 11 of Cap. 1109 and section 15(1)(D) of Cap. 1126.

Part XIV **Legal Practitioners**

Clause 107 of the Bill proposes to amend section 9(4) of the Legal Practitioners Ordinance (Cap. 159) by repealing "one of the solicitors on the Panel" and substituting "a solicitor". Please clarify whether it is the policy intent for the Chief Justice to appoint a solicitor as the Tribunal Convenor, regardless of whether he is on the Solicitors Disciplinary Tribunal Panel.

Clause 126 of the Bill proposes to amend section 3 of the Legal Practitioners (Amendment) Ordinance 1998 by repealing "Chief Justice" and substituting "Chief Judge" in the new section 40A(1) and (2) of the Legal Practitioners Ordinance. Is there any need to amend the new section 40A(4) as well?

Clause 126 also proposes to amend the new section 40E of the Legal Practitioners Ordinance in relation to the issue of practising certificates to notaries public. Has the Administration considered the need to introduce amendments to the new section 40E(6) along the same line as Clause 105 (amending section 6(5) of the Legal Practitioners Ordinance) to transfer the power of the Chief Justice to the Society of Notaries?

Consultation

The LegCo Brief does not mention consultation being carried out except for Parts V and VII. Please clarify whether consultation has been conducted in respect of amendments proposed in the remaining Parts of the Bill.

Yours sincerely,

(Bernice Wong)
Assistant Legal Adviser

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