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16 May, 2002

Mr Paul Woo
Clerk to Bills Committee
Legislative Council Secretariat
Legislative Council Building
9055
8 Jackson Road
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Hong Kong

By Fax: 2509

Dear Mr Woo,

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2001

I refer to your letter of 10 May 2002 raising questions relating to the above Bill. Our replies are set out below.

Part I of the Bill (Commencement)

Clause 2

- (a) *to consider introducing a Committee Stage amendment to provide for Part X of the Bill to take effect from 1 July 1997;*

Part X of the Statute Law (Miscellaneous Provisions) Bill 2001 deals with the amendment proposals to replace “Crown” by “Government” in the “non-immunity” clauses. The amendment proposals under Part X of the Bill are to implement the decisions made at the meeting of the Bills Committee on the Adaptation of Laws (No. 16) Bill 1999 (LC Paper No. CB(2) 2363/99-00).

The purpose of the adaptation of law exercise is to give effect to the principle that each provision of the various Ordinances should as far as possible be given the same legal effect after its adaptation as before. The Administration considers that the term “Crown” in the “non-immunity” clauses has a broader meaning, and believes that it should be replaced by a term that is roughly equivalent in meaning. It further considers that the most suitable term in this context is “State”, having regard to section 66 of the Interpretation and General Clauses Ordinance (Cap. 1).

The Bills Committee on the Adaptation of Laws (No. 16) Bill 1999 rejected the Administration’s proposal to replace “Crown” by “State” in the “non-immunity” clauses, and considered that the term “Crown” should be replaced by “Government”. The Administration was of the view that the Bills Committee’s proposal was beyond the ambit of the Adaptation of Laws Programme, and that it would be better carried out by way of law reform. In order to address the Bills Committee’s concern but without changing the scope of the Adaptation of Laws Programme, the provisions to replace “Crown” by “Government” in the “non-immunity” clauses were deleted from the Adaptation of Laws (No. 16) Bill 1999.

The amendments to replace “Crown” by “Government” in the “non-immunity” clauses are now dealt with under the Statute Law (Miscellaneous Provisions) Bill 2001. Unlike amendments made under the adaptation of law exercise which are given retrospective effect as from 1 July 1997, the amendments made under the law reform exercise will be effective as from the date when the Statute Law (Miscellaneous Provisions) Bill 2001 comes into operation. The Administration considers that it is unnecessary to introduce a Committee Stage Amendment to provide for Part X of the Bill to take effect from 1 July 1997. It is of the view that the term “Crown” will be construed as “State” under section 2A(1) of the Interpretation and General Clauses Ordinance (Cap. 1) between 1 July 1997 and the date when the Bill is enacted.

Part IV of the Bill (Power of Court of Appeal and Appeal Committee to Award Costs)

Clause 9

- (b) *to advise whether, in the case of the appeal brought under section 84 of the District Court Ordinance and dismissed in 1999, costs had not been awarded to the defendant because of the absence of legislative provision like the proposed section 9A of the Costs in Criminal Cases Ordinance;*

In Secretary for Justice v LAM Tat-ming & Anor. [1999] 3 HKC 769, the Secretary for Justice appealed by way of case stated against the acquittal of the respondents in the District Court on corruption charges under section 84 of the District Court Ordinance (Cap. 336). The appeal was dismissed, and counsel for the first respondent applied for costs. The application for costs was rejected.

According to Stuart-Moore VP (at page 809), the situations where costs can be awarded, following appeal proceedings, are set out in the Costs in Criminal Cases Ordinance (Cap. 492). However, proceedings which come to the Court of Appeal under section 84 of the District Court Ordinance (Cap. 336) are not included. The Court of Appeal, therefore, does not have the power to award costs.

Part VII of the Bill (Power of Court to Order Repayment of Deposit)

- (c) *to advise on the application of the proposed amendment to section 12 of the Conveyancing and Property Ordinance, and reconsider the need for a transitional provision in relation to current applications made to the court under section 12 prior to the commencement of the amendment, given that the amendment does not deal with a procedural matter;*

In a letter dated 15 March 2002 the Administration expressed the view that the proposed 12(1A) serves to supplement the court's equitable power under the existing section 12 to order the return of a deposit where court proceedings are current.

In the interests of certainty, the Administration agrees with the Bills Committee's proposal to provide for a transitional provision to the effect that the court will be entitled to exercise its discretion to order the return of a deposit under the new section 12(1A) in a case where the court has not given judgment prior to the commencement of the amendment.

Part XIV of the Bill (Amendments to Legal Practitioners Ordinance)

Clause 108

- (d) *to revise the drafting of the proposed section 9A(1B) of the Legal Practitioners Ordinance by providing expressly that offences involving dishonesty would not be dealt with by way of fixed penalty under the proposed section 9AB. Some members are of the view that the present drafting of proposed section 9A(1B)(a), (b) and (c) does not safely preclude offences of dishonesty from being disposed of by way of the fixed penalty system.*

The Administration has consulted the Law Society on this question. The Law Society is of the view that a list of the offences which will be dealt with by way of fixed penalty will be expressly provided for in the subsidiary rules, and will be subject to the negative vetting of the Legislative Council.

Nevertheless, the Law Society also takes the view that offences of dishonesty will be precluded from the list of offences in the subsidiary rules, and it has no objection to the Bills Committee's proposal to revise the proposed section 9A(1B) of the Legal Practitioners Ordinance to provide expressly that offences involving dishonesty will not be dealt with by way of fixed penalty.

Yours sincerely,

(Michael Scott)
Senior Assistant Solicitor General