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**Paper for the meeting of the
Panel on Administration of Justice and Legal Services
on 20 March 2001**

Drafting of Bilingual Bills

Members may recall that the Bills Committee on the Securities and Futures Bill and Banking (Amendment) Bill 2000 has expressed concern that there are different approaches in drafting between the English and Chinese texts of the Bill, and that Members of the Legislative Council as well as the relevant professional bodies have not been consulted on this drafting practice. At the last meeting of the Panel, members agreed to discuss the policy aspects of this drafting practice as it has implications to the scrutiny of other bills submitted to the Legislative Council. This paper provides background information and some examples to facilitate the discussion of members.

2. Under section 4 of the Official Languages Ordinance (Cap. 5), all Ordinances are required to be enacted in both English and Chinese. Section 10B of the Interpretation and General Clauses Ordinance (Cap. 1) provides that the English and Chinese texts of an Ordinance shall be equally authentic, and that the provisions of an Ordinance are presumed to have the same meaning in each authentic text. Where a comparison of the authentic texts of an Ordinance discloses a difference of meaning which the rules of statutory interpretation ordinarily applicable do not resolve, the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, shall be adopted.

3. In the scrutiny of bills, the Legal Service Division assesses whether the drafting could accurately reflect the policy as stated in the LegCo Brief. The Division also assesses whether the provisions are consistent with various aspects of the law, and whether the meaning of one text is the same as the other. Where a view is formed that there may be a problem in drafting or law, or a difference in meaning between one text and the other, the Division will bring the problem to the attention of Members and the Administration.

Examples from the Securities and Futures Bill

4. The Legal Service Division has completed an initial scrutiny of the Chinese text of the Securities and Futures Bill. A marked-up copy of the clauses in which there are different approaches in drafting has been passed to the Administration for comments. The marked-up copy (clauses with different approaches are underlined) is attached in Annex A. The Division has separately sent to the Administration the parts of the Bill with suspected difference in meaning between one text and the other.

5. Common scenarios of different approaches between the English and Chinese texts in Annex A are highlighted below:

(A) The Chinese text contains less details than the English text -

(i) In **clause 105(1)** (*page 4 of the bundle*), the English and Chinese texts are -

"an authorization of a collective investment scheme under section 103, or an authorization of the issue of an advertisement, invitation or document under section 104"; and

"就根據第103或104條給予的認可而言".

(ii) In **clause 199(5)** (*page 25 of the bundle*), the English and Chinese texts are:

"on an application of the Commission, the licensed corporation or any other person made under subsection (4)"; and

"根據第(4)款就有關財產提出的申請".

(iii) In **clause 335(1)(b)(ii)** (*page 60 of the bundle*), the English and Chinese texts are

"a short position which a minor child (natural or adopted) of a director or chief executive of a listed corporation (such child not being himself or herself a director or chief executive of the listed corporation) has in shares"; and

"該等子女持有的股份的淡倉".

(B) Structural difference between the English and Chinese texts -

(i) **Clause 151(1)** (*page 7 of the bundle*)

The paragraphing is different in the English and Chinese texts.

(ii) **Clause 172(10)(a)** (*page 13 of the bundle*)

The Chinese text contains categories as "第一類" and "第二類", but the English text does not contain similar references.

(C) The reader of the Chinese text has to refer to another part of the bill for details-

(i) **Clause 237, paragraphs (b) and (c) in the definition of "securities"** (*page 38 of the bundle*), the English and Chinese texts are -

"shares, stocks, debentures, loan stocks, funds, bonds or notes" and

"(a)段所述各項目".

The reader has to refer to paragraph (a) of the definition to find out what the items are.

(ii) **Clause 281** (*page 49 of the bundle*), the English and Chinese texts are -

"agrees to sell, purchase, exchange or subscribe for, any listed securities or their derivatives" and

"與別人協議作出上述作為".

Again the reader has to refer to the acts specified in another part of the clause.

Examples in other Bills

6. Apart from the Securities and Futures Bill, instances of different approaches in drafting between the English and Chinese texts have been found in other bills in the past. In relation to **clause 13(5) of the Mass Transit Railway Bill** (Annex B) (*page 84 in the bundle*), the Administration moved a committee stage amendment after members of the Bills Committee requested the Administration to improve the Chinese text of the clause to reflect more clearly the meaning of the English text. **Clause 9(2) of the Broadcasting Bill** (Annex C) (*page 85 in the bundle*) contains another example in which the Chinese text

contained less particulars. After the Legal Service Division brought the matter to the attention of the Administration, the Administration agreed to move committee stage amendments to bring the drafting of the Chinese text in line with the English text. The Chinese texts after amendment at committee stage are now in section 13(5) of the Mass Transit Railway Ordinance (Cap. 556) and section 9(2) of the Broadcasting Ordinance (Ord. No. 48 of 2000) respectively (Annex D and E) (*pages 87 and 88 in the bundle*).

7. On the other hand, **clause 16(4)(e) of the Karaoke Establishments Bill** (Annex F, *page 90 of the bundle*) contains an example that components of a sentence in the English text do not appear in the Chinese text. The English and Chinese texts are -

"not being a police officer or a public officer in the course of his duty or a person authorized by the licensing authority in writing, enters or is in a karaoke establishment while an order under section 15 is for the time being in force" and

"違反第15(3)條".

Elements of the offence created are not stated in the Chinese text. The Administration has agreed to consider amending the Chinese text to mirror the manner of presentation adopted in the English text so as to avoid problems in drafting the particulars of the offence in case of a prosecution.

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