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By fax: 2509 9055
13 June 2005

Mrs Percy Ma,
Clerk to Bills Committee,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

via Mr Michael Scott, SASG/GLP

Dear Mrs Ma,

**Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2005
(the “Bill”)**

At the meeting of the Bills Committee on 9 June 2005, Members requested the Administration to consider if the savings provisions in clause 15, and in the proposed Committee Stage Amendments to clause 15, of the Bill are necessary.

2. Division 5 of Part 2 of the Bill proposes to transfer to the Chief Judge certain rule-making and related powers (including the powers to issue or give directions) of the Chief Justice under certain Ordinances. Clause 15 contains savings provisions to the effect that any rules made, or any directions issued or given, under those Ordinances by the Chief Justice which are in force immediately before the commencement of clause 15, when enacted, shall continue in force as if the rules were made, or the directions were issued or given, under those Ordinances by the Chief Judge.

3. Section 28(1)(c) and (ca) of the Interpretation and General Clauses Ordinance (Cap. 1) (at Annex A) provides expressly for the situation where there is a transfer of power to make subsidiary legislation. Section 36 of that Ordinance (at Annex B) contains general provisions to save subsidiary legislation

on the repeal and re-enactment of an Ordinance or a provision of an Ordinance. In view of the above provisions, as far as the rules made by the Chief Justice are concerned, after the proposed transfer of power, the Chief Judge can amend them.

4. However, the above provisions do not apply to directions issued or given by the Chief Justice under the relevant Ordinances as they are not subsidiary legislation. It is necessary to include express savings provisions to ensure the continuity of the existing directions and to enable the Chief Judge to amend them.

5. The Administration is of the view that while the savings provisions relating to the rules made by the Chief Justice may not be necessary in view of the above provisions, it would be advisable to include them for the following reasons:

- (a) The provisions of the Interpretation and General Clauses Ordinance (including sections 28(1)(c) and (ca) and 36) apply to the Bill only if “a contrary intention” does not appear. If the Bill provides expressly for the continuity of directions and is silent about the rules, it may be argued that there is an implied intention that the rules are not to continue in force after the transfer of power.
- (b) Even otherwise, a self-contained and comprehensive clause containing savings provisions dealing with both the rules and directions is preferable to a clause containing partial savings provisions dealing only with directions.

Yours sincerely,

(Ms Stella Chan)
Government Counsel
General Legal Policy/Legal Policy Division

28. General provision with regard to power to make subsidiary legislation

(1) Where an Ordinance confers power on a person to make subsidiary legislation, the following provisions shall have effect with reference to the subsidiary legislation –

.....

- (c) subsidiary legislation may at any time be amended by the same person and in the same manner by and in which it is made;
- (ca) where the person referred to in paragraph (c) has been replaced wholly or in part by another person, the power conferred by paragraph (c) may be exercised by the other person for all matters in his jurisdiction as if he were the original person;

.....

36. Effect of repeal on subsidiary legislation

(1) Where any Ordinance-

- (a) repeals in whole or in part any former Ordinance and substitutes other provisions therefor; or
- (b) repeals in whole or in part any former Ordinance and re-enacts such former Ordinance with or without modification,

any subsidiary legislation made under the former Ordinance and in force at the commencement of the repealing Ordinance shall, so far as it is not inconsistent with the repealing Ordinance, continue in force and have the like effect for all purposes as if made under the repealing Ordinance.

(2) Where any subsidiary legislation is continued in force by virtue of subsection (1), such subsidiary legislation may be from time to time amended as if it had been made under the repealing Ordinance.”.