

**For information
24 September 2007**

**Bills Committee on the
Statute Law (Miscellaneous Provisions) Bill 2007**

**Proposed Amendments to Provisions Providing that the
Decision of the Court of First Instance on an Appeal
is Final (Part 8 of the Bill)**

Purpose

At the Bills Committee meeting on 3 July 2007, Members noted that the proposed amendments under Part 8 of the Bill sought to amend the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg. A), the Pharmacy and Poisons Ordinance (Cap. 138) and the Lifts and Escalators (Safety) Ordinance (Cap. 327) to give effect to the judgment of the Court of Final Appeal (CFA) in the case of *A Solicitor v The Law Society of Hong Kong & Secretary for Justice (Intervener)* [2004] 1 HKLRD 214 (CFA Judgment). A Member asked whether similar amendments should be made to the finality provisions contained in other Ordinances and, if so, the legislative timetable. This paper provides the Administration's response.

The CFA Judgment

2. The CFA Judgment was handed down in December 2003 in which the CFA held that the finality provision in section 13(1) of the Legal Practitioners Ordinance (Cap. 159) was inconsistent with the power of final adjudication of the CFA under Article 82 of the Basic Law. Section 13(1) of Cap. 159 provides that an appeal shall lie to the Court of Appeal (CA) against any order of a Solicitors Disciplinary Tribunal and it includes a provision stipulating that "the decision of the Court of Appeal on any such appeal shall be final".

3. Sixteen Ordinances were subsequently identified as containing finality provisions at the CA level which were identical to the finality provision in section 13(1) of Cap. 159 in all material aspects. These provisions were amended under the Statute Law (Miscellaneous Provisions) Ordinance 2005.

Proposed Amendments under Part 8 of the Bill

4. In addition, a further three provisions, namely those referred to in Part 8 of the Bill in the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg. A), the Pharmacy and Poisons Ordinance (Cap. 138) and the Lifts and Escalators (Safety) Ordinance (Cap. 327) were identified as being identical to the finality provisions in section 13(1) of Cap. 159 in all material respects, save that, under each, the final decision is made by the Court of First Instance and not the CA.

5. The proposed amendments under Part 8 of the Bill are related to these provisions and to make consequential amendments.

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