

立法會
Legislative Council

LC Paper No. CB(2)2693/06-07(05)

Bills Committee on Statue Law (Miscellaneous Provisions) Bill 2007

**Summary of views and suggestions raised by organisations/individuals
at the meeting on 16 June 2007**

Organisation/Individual (LC Paper No. of submission if applicable)	Views and/or suggestions	Remarks
(1) Proposed amendments to the Public Order Ordinance (Cap. 245) and the Societies Ordinance (Cap. 151) (Part 3 of the Bill)		
The Hong Kong Bar Association	<ul style="list-style-type: none">♦ <u>Did not object</u> to the proposed amendments to repeal references to "<i>ordre public</i>" from the two Ordinances. ♦ <u>Considered</u> that the proposed amendments were generally technical in nature and were in conformity with the judgment delivered by the Court of Final Appeal (CFA) in the case of <i>Leung Kwok Hung and others v HKSAR</i> (the case) in 2005.	The Administration's response to views and suggestions raised by deputations was circulated to members vide LC Paper No. CB(2)2336/06-07(01) on 29 June 2007.

Organisation/Individual (LC Paper No. of submission if applicable)	Views and/or suggestions	Remarks
The Law Society of Hong Kong [LC Paper No. CB(2)2163/06-07(01)]	<ul style="list-style-type: none">◆ <u>Did not object</u> to the proposed amendments to the two Ordinances.◆ <u>Considered</u> that the Administration's proposal was in line with CFA judgment in 2005.	
Hong Kong Human Rights Monitor	<ul style="list-style-type: none">◆ <u>Agreed</u> with the proposed amendments to delete references to "<i>ordre public</i>" from the Public Order Ordinance (POO) (Cap. 245) in the light of CFA judgment.◆ <u>Suggested</u> that the Administration should take the opportunity to conduct a comprehensive review on POO, taking into consideration the public views on the Ordinance.◆ <u>Considered</u> that the rights to peaceful assembly and demonstration should be clearly defined and better protected under the existing legal framework.	

Organisation/Individual (LC Paper No. of submission if applicable)	Views and/or suggestions	Remarks
Hong Kong Human Rights Commission <i>[LC Paper No. CB(2)2183/06-07(01)]</i>	<ul style="list-style-type: none">♦ <u>Opposed</u> to the proposed amendments, as the Administration had simplified the CFA judgment into a matter of merely replacing the term "public order (<i>ordre public</i>)" in POO with the term "public order".♦ <u>Considered</u> that concrete measures should be introduced to enhance protection of the rights to peaceful assembly and demonstration.♦ <u>Suggested</u> that a comprehensive review of POO should be conducted in order to bring its terms in compliance with Article 21 of the International Covenant on Civil and Political Rights (ICCPR). The Bills Committee should consider deleting the proposed amendments in Part 3 of the Bill, if the Administration did not agree to conduct a comprehensive review on POO.	

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Amnesty International Hong Kong [LC Paper No. CB(2)2183/06-07(02)]	<ul style="list-style-type: none">♦ <u>Welcomed</u> the proposed amendments to delete references to "(<i>ordre public</i>)" from POO, but <u>expressed regret</u> that the Administration did not take the opportunity to conduct a comprehensive review on POO in response to the comments made by the United Nations Human Rights Committee on POO in 1999. ♦ <u>Considered</u> that restrictions on the rights to peaceful assembly and demonstration should be clearly defined by law and exercised only when there were legitimate reasons. ♦ <u>Suggested</u> some measures to enhance the protection of the rights to peaceful assembly and demonstration, including reviewing the Police's processing of notification of public meetings and processions and requiring the Police to seek approval from the Judiciary to exercise its power to prohibit, object to or impose conditions on a notified public meeting/procession.	

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Hong Kong Federation of Students <i>[LC Paper No. CB(2)2222/06-07(01)]</i>	<ul style="list-style-type: none">◆ <u>Expressed reservation</u> about the proposed amendments, as the proposal could not fully address the comments and concern made by CFA on POO in the case in 2005.◆ <u>Considered</u> that the Administration should conduct a comprehensive review on POO in relation to the Police's processing of notification of public meetings and processions, with a view to bringing the restrictions to be in conformity with Article 27 of the Basic Law and Article 21 of ICCPR.	
Mr LO Wai-ming <i>[LC Paper No. CB(2)2222/06-07(02)]</i>	<ul style="list-style-type: none">◆ <u>Expressed reservation</u> about the proposed amendments, as the proposal failed to provide a satisfactory response to the comments made by CFA in the case.◆ <u>Considered</u> that the Administration should conduct a comprehensive review on POO in relation to public meetings and procession. To protect the rights to peaceful assembly and demonstration, the Commissioner for Police's statutory discretion to restrict these rights should be clearly defined under POO.	

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(2) Proposed amendments to the Homicide Ordinance (Cap. 339) (Part 4 of the Bill)		
The Law Society of Hong Kong <i>[LC Paper No. CB(2)2034/06-07(05)]</i>	<ul style="list-style-type: none"> ♦ <u>Considered</u> that the legislative proposals were acceptable. 	
(3) Proposed amendments to the Criminal Procedure Ordinance (Cap. 221) (Part 5 of the Bill)		
The Law Society of Hong Kong <i>[LC Paper No. CB(2)2034/06-07(05)]</i>	<ul style="list-style-type: none"> ♦ <u>Considered</u> that the Administration should clarify the rationale for giving an unfettered discretion to the court to impose a discretionary sentence for the offence of perverting the course of public justice and confirm the position in other jurisdictions. 	
(4) Proposed amendments to the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) (Part 6 of the Bill)		
The Law Society of Hong Kong <i>[LC Paper No. CB(2)2034/06-07(05)]</i>	<ul style="list-style-type: none"> ♦ <u>Considered</u> that the legislative proposals were acceptable. 	

Organisation/Individual (LC Paper No. of submission if applicable)	Views and/or suggestions	Remarks
(5) Proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492) (Part 7 of the Bill)		
The Hong Kong Bar Association	<ul style="list-style-type: none"> ♦ <u>Opposed</u> to the proposed amendments, as they would create, rather than solve, problems in the administration of justice. ♦ <u>Considered</u> that the expression of "misconduct", "default", and "improper or unreasonable acts or omission" in the proposed definition of "wasted costs" were too vague and wide in scope. ♦ <u>Expressed concern</u> that there would be inequality arising from the difference in treatment in respect of lawyers in private practice and Government lawyers as the former would be personally liable to payment of costs under a wasted costs order, while that of the latter was funded by public money. 	The Hong Kong Bar Association would provide further views on the proposed amendments.

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The Law Society of Hong Kong <i>[LC Paper No. CB(2)2034/06-07(05)]</i>	<ul style="list-style-type: none">◆ <u>Opposed</u> to the proposed amendments to expand the scope of the existing wasted costs provisions for criminal proceedings, as civil proceedings and criminal proceedings were very different in nature.◆ <u>Considered</u> that simply highlighting "fearless advocacy under the adversarial system of justice" as one of the many factors for the court to consider would not be able to address the concerns raised by the two legal professional bodies.◆ <u>Expressed concern</u> that the proposed amendments would have adverse effect of deterring solicitors from taking up criminal legal aid cases.◆ <u>Pointed out</u> that both the Hong Kong Bar Association and the Law Society of Hong Kong had developed their own disciplinary guidelines and procedures on professional misconduct.	

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<p>Hong Kong Consumer Council <i>[LC Paper No. CB(2)2107/06-07(01)]</i> <i>(written submission only)</i></p>	<ul style="list-style-type: none">◆ <u>Supported</u> in principle the proposed amendments to expand the province of section 18 of the Costs in Criminal Cases Ordinance (Cap. 492) to include criminal proceedings. ◆ <u>Welcomed</u> that section 18 be amended to the effect that "fearless advocacy under the adversarial system of justice" would be one of the factors considered by the court when deciding whether or not to make a wasted costs order. ◆ <u>Considered</u> that the wordings "misconduct", "default" and "unreasonable act or omission" in the proposed provisions of clause 21 of the Bill should be clearly defined. ◆ <u>Suggested</u> that a proper safeguard should be introduced in clause 21(b) of the Bill by making "it is unreasonable to expect the party to the proceedings to pay" an additional rather than alternative element to the improper acts or omissions in constituting the circumstances under which "wasted costs" were incurred.	

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Legal Aid Department <i>[LC Paper No. CB(2)2106/06-07(02)]</i> <i>(written submission only)</i>	<ul style="list-style-type: none">♦ <u>Supported</u> the proposed introduction of section 18(5) to the Costs in Criminal Cases Ordinance. ♦ <u>Considered</u> that the proposed amendments would serve to remove any uncertainty as to the Director of Legal Aid's rights to recoup any wasted costs ordered to be paid by the Court.	
(6) Proposed amendments to the Legal Practitioners Ordinance (Cap. 159) : bankruptcy of solicitors (Part 10 of the Bill)		
The Law Society of Hong Kong <i>[LC Paper No. CB(2)2106/06-07(01)]</i>	<ul style="list-style-type: none">♦ <u>Proposed</u> that section 53(1) of the Legal Practitioners Ordinance (Cap. 159) be amended to make it clear that a law firm which intended to employ a bankrupt solicitor or foreign lawyer should apply to the Law Society of Hong Kong for written permission to do so, irrespective of whether he/she held a practising certificate or of his/her registration status at the time of his/her bankruptcy.	