

Response to the Clerk to Bills Committee

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007

Thank you for your letters of 30 November 2007 and 11 December 2007, advising the Administration that at the Bills Committee meeting held on 29 November 2007, a majority of the attending members were inclined to support the proposal of not passing the proposed amendments in Part 3 of the Bill and would request the Administration to conduct a comprehensive review of the Public Order Ordinance (Cap. 245) during the resumption of the Second Reading debate on the Bill. As requested, we set out our response to the proposal below.

Members' principal concern, as we understand it, was whether the Administration's proposed repeal of references to "*ordre public*" in the Public Order Ordinance could bring that Ordinance into conformity with the Court of Final Appeal (CFA)'s judgment in the case of *Leung Kwok Hung v HKSAR [2005] 3 HKLRD 164* (the case). As the Administration has previously explained to the Bills Committee, the proposed amendments to the Public Order Ordinance is to implement the CFA's judgment on the case which held, inter alia, that "public order (in the law and order sense)" should be severed from "public order (*ordre public*)" in sections 14(1), 14(5) and 15(2) of the Public Order Ordinance. With such amendments, the relevant provisions of the statute book would fully conform with the CFA's ruling in respect of the term "public order (*ordre public*)". The Administration's considered view is that the proposed amendments in Part 3 of the Bill should be taken forward in the interest of clarity. We note that, when invited by the Bills Committee to comment on the Bill, both The Hong Kong Bar Association and The Law Society of Hong Kong confirmed that the proposed amendments were in line with the afore-mentioned CFA judgment and had no objection to them.

We have noted the suggestion that the Administration should conduct a comprehensive review of the Public Order Ordinance before taking forward any legislative amendments to that Ordinance to give effect to the afore-mentioned CFA judgment. For the reason explained above, we do not consider that the conduct of a comprehensive review of the Public Order Ordinance should become a pre-requisite for proceeding with the current legislative amendment exercise.