

LEGISLATIVE COUNCIL BRIEF
STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

INTRODUCTION

At the meeting of the Executive Council on 13 March 2007, the Council ADVISED and the Chief Executive ORDERED that the Statute Law (Miscellaneous Provisions) Bill 2007, at **Annex A**, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. The proposed amendments seek to improve the law in the following ways.

(a) **Bankruptcy Ordinance (Cap. 6)**

On 20 July 2006, the Court of Final Appeal ruled that section 30A(10)(b)(i) of the Bankruptcy Ordinance (Cap. 6) is unconstitutional on grounds of being unreasonably restrictive of the right to travel guaranteed under Article 31 of the Basic Law and Article 8(2) of the Hong Kong Bill of Rights. It is necessary to repeal section 30A(10)(b)(i).

(b) **Public Order Ordinance (Cap. 245) and Societies Ordinance (Cap. 151)**

It is necessary to give effect to the Hong Kong Court of Final Appeal's (CFA) judgment in *Leung Kwok Hung v HKSAR [2005] 3 HKLRD 164* which held 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 (Cap. 245). There are similar provisions in the Societies Ordinance (Cap. 151) which need to be amended as a result of that decision.

(c) Homicide Ordinance (Cap. 339)

It would be desirable that the words “killing himself or” be deleted from section 5(1) and (2) of the Homicide Ordinance (Cap. 339) to reflect the abolition of the offence of suicide. Section 5(1), as it stands, provides that it shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by another person. However, in 1967, the crime of suicide or self-murder was abolished by the enactment of section 33A of the Offences Against the Person Ordinance (Cap. 212). Section 33B of Cap. 212 made it clear that being a party to another person’s suicide was no longer murder but was the new statutory offence of “complicity in another’s suicide” which carries a maximum penalty of 14 years’ imprisonment.

(d) Criminal Procedure Ordinance (Cap. 221)

Having regard to the comments made by the Court of Appeal in a decided case, section 101I of the Criminal Procedure Ordinance (Cap. 221) is to be amended to raise the maximum penalty for the offence of perverting the course of public justice. There will be no fixed maximum, thereby enabling the court to impose a sentence that is appropriate to the seriousness of the situation which has arisen in accordance with established sentencing principles derived from offences against the administration of justice.

(e) Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240)

It is necessary to enable magistrates to make orders for costs under section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240). Where a person has not paid a fixed penalty or notified the Commissioner of Police that he wishes to dispute liability, a magistrate shall, on application under section 3A, order him to pay the fixed

penalty together with an additional penalty equal to the amount of the fixed penalty. However, at present there is no provision empowering magistrates to order costs in such proceedings.

(f) Costs in Criminal Cases Ordinance (Cap. 492)

Having regard to comments made by the Court of Appeal in a number of decided cases, it is proposed to amend section 2 of the Costs in Criminal Cases Ordinance (Cap. 492) to enable the courts, in appropriate cases, to require legal or other representatives to compensate in costs a party injured as a result of unjustifiable conduct on their part.

(g) Finality of appeals in the Fire Services (Installation Contractors) Regulations (Cap. 95A), Pharmacy and Poisons Ordinance (Cap. 138) and Lifts and Escalators (Safety) Ordinance (Cap. 327)

It is necessary to delete finality provisions that prevent further appeal in the Fire Services (Installation Contractors) Regulations (Cap. 95A), Pharmacy and Poisons Ordinance (Cap. 138) and Lifts and Escalators (Safety) Ordinance (Cap. 327), similar to section 13(1) of the Legal Practitioners Ordinance (Cap. 159). The latter provision was held by the Court of Final Appeal to be inconsistent with its power of final adjudication under Article 82 of the Basic Law in *Solicitor v Law Society of Hong Kong [2004] 1 HKLRD 214*.

(h) Legal Practitioners Ordinance (Cap. 159) and Rules of the High Court (Cap. 4A)

It is necessary to rectify inconsistencies relating to the time for serving notices of motion of appeal in the Legal Practitioners Ordinance (Cap. 159) and the High Court Rules (Cap. 4A). The amendments are consequential to the replacement of “6 weeks” in Rule 4(1)(c), Order 59 of the Rules of the High Court with “28 days” pursuant to section

3(b) of the Rules of the High Court (Amendment) Rules 2000.

(i) **Definition of “PCLL” in the Legal Practitioners Ordinance (Cap. 159)**

In accordance with the recommendation of the Standing Committee on Legal Education and Training, it is necessary that the definition of “Postgraduate Certificate in Laws” in the Legal Practitioners Ordinance (Cap. 159) be amended to include the PCLL to be awarded by The Chinese University of Hong Kong. This will place PCLL graduates from that university in the same position as other PCLL graduates for the purposes of entering the legal profession.

(j) **Legal Practitioners Ordinance (Cap. 159): bankruptcy of solicitors**

The Law Society has proposed to amend section 53(1) of the Legal Practitioners Ordinance (Cap. 159) to make it clear that a law firm which intends to employ a bankrupt solicitor or foreign lawyer should apply to the Law Society for written permission to do so, irrespective of (a) whether he holds a practising certificate or (b) his registration status at the time of his bankruptcy.

(k) **Prevention of Bribery Ordinance (Cap. 201) and Independent Commission Against Corruption Ordinance (Cap. 204)**

Certain minor inconsistencies between the English and Chinese texts in the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204) will be corrected.

(l) **Interpretation and General Clauses Ordinance (Cap. 1)**

It is proposed to give the Secretary for Justice a power to make textual amendments to (i) Ordinances and subsidiary legislation to substitute the calendar date for any reference to a date by an expression that does not specify the actual date (e.g. commencement date, appointed date); and (ii) subsidiary legislation to substitute for any general reference to subsidiary legislation (e.g. regulation made under section xx) the title of the subsidiary legislation. The purpose is to improve the readability of Hong Kong legislation.

(m) **Minor amendments to various ordinances**

A number of minor irregularities and inconsistencies have been detected in our legislation. These should be rectified. Other minor amendments are required to update, improve or clarify miscellaneous provisions in legislation. One such amendment is the amendment to the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) to expressly enable Parts 3 and 4 of that Ordinance to be commenced with certain specified provisions excepted. (Those specified provisions relate to the provisions of the Chinese Medicine Ordinance (Cap. 549) on the licensing of Chinese medicine retailers and the registration of proprietary Chinese medicine and not all of those provisions of the Chinese Medicine Ordinance are fully implemented.)

OTHER OPTIONS

3. The proposed omnibus Bill is the only efficient option by which to make improvements to a number of Ordinances and subsidiary legislation. It would be inefficient to introduce individual amending Bills or subsidiary legislation for each Ordinance or subsidiary legislation

that is to be amended.

THE BILL

4. The principal object of the Bill is to effect the improvements described in paragraph 2 above.

LEGISLATIVE TIMETABLE

5. The legislative timetable will be –

Publication in the Gazette	23 March 2007
First Reading and commencement of Second Reading debate	25 April 2007
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

6. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental, sustainability or civil service implications. The Bill will not affect the binding effect of the existing provisions of the Ordinances being amended or their subsidiary legislation.

7. Some of the legislative amendments may have financial implications. For example, by enabling costs to be recovered from fixed penalty defaulters, the proposed amendments to Cap. 240 (paragraph 2(e) above) are expected to generate modest savings in costs that would otherwise have been lost to the general revenue. As for the amendments to Cap. 492 (paragraph 2(f) above) which apply equally to legal officers, Legal Aid Officers and to prosecutors appointed by the Secretary for Justice to conduct prosecutions in the magistrates courts, we anticipate that the financial implications will be negligible¹. However, this will be

¹ For cases assigned to private practitioners by the two departments, the concerned assigned lawyers will be personally responsible for any wasted costs orders awarded against them. Hence, there is no

a matter for the courts to determine on a case by case basis and it cannot be assumed that wasted costs orders will not be made against such officers. In any case, any additional financial requirements arising from the amendments to Cap. 492 as well as from the other legislative proposals covered in the Bill will be absorbed from within the existing resources of the Department of Justice and the Legal Aid Department as appropriate.

PUBLIC CONSULTATION

8. The proposed amendments to the Costs in Criminal Cases Ordinance (Cap. 492) were the subject of consultation. Details of the consultation are at **Annex B**. The Law Society and Bar Association oppose the amendment. In order to recognise, in the Bill, the concerns of the legal profession, the Administration has included in the proposed amendment a provision which requires the court to take into account the public interest in fearless advocacy when determining whether or not to make a wasted costs order against a legal representative.

9. The Legislative Council's Panel on Administration of Justice and Legal Services has been consulted on the legislative proposal at its meeting on 27 November 2006. It has no objection to the proposal and indicated that it would be referred to a Bills Committee.

PUBLICITY

10. A press release will be issued on **20 March 2007**. A spokesman will be available to answer media and public enquiries.

ENQUIRY

11. Any enquiry on this brief should be addressed to Mr Michael Scott, Senior Assistant Solicitor General, at telephone number 2867 2157 or Ms Stella Chan, Government Counsel, at telephone number 2867 4900.

Department of Justice
March 2007

**STATUTE LAW
(MISCELLANEOUS PROVISIONS) BILL 2007**

ANNEXES

- Annex A - Statute Law (Miscellaneous Provisions) Bill 2007
- Annex B - Ordinance which was the subject of consultation

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL
2007**

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A BILL

To

Provide for miscellaneous amendments to various Ordinances and for connected purposes.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Statute Law (Miscellaneous Provisions) Ordinance 2007.

2. Commencement

(1) This Ordinance, other than Division 3 of Part 13, shall come into operation on the day on which this Ordinance is published in the Gazette.

(2) Division 3 of Part 13 shall come into operation on a day to be appointed by the Director of Food and Environmental Hygiene by notice published in the Gazette.

PART 2

AMENDMENT RELATING TO A BANKRUPT'S OBLIGATION TO NOTIFY THE TRUSTEE WHEN LEAVING HONG KONG

Bankruptcy Ordinance

3. Discharge from bankruptcy

Section 30A(10)(b)(i) of the Bankruptcy Ordinance (Cap. 6) is repealed.

PART 3

AMENDMENTS TO REFERENCES TO “ORDRE PUBLIC” IN THE SOCIETIES ORDINANCE AND THE PUBLIC ORDER ORDINANCE

Societies Ordinance

4. Interpretation

Section 2(4) of the Societies Ordinance (Cap. 151) is amended by repealing “, “public order (*ordre public*)””.

5. Registration and exemption from registration

Section 5A(3)(a) is amended, in the English text, by repealing “(*ordre public*)”.

6. Cancellation of registration or exemption from registration

Section 5D(1)(a) is amended, in the English text, by repealing “(*ordre public*)”.

7. Prohibition of operation of societies

Section 8(1)(a) is amended, in the English text, by repealing “(*ordre public*)”.

8. Power of entry in special cases

Section 32 is amended, in the English text, by repealing “(*ordre public*)”.

Public Order Ordinance

9. Interpretation

Section 2(2) of the Public Order Ordinance (Cap. 245) is amended by repealing “, “public order (*ordre public*)””.

10. General powers of the Commissioner of Police

(1) Section 6(1) is amended, in the English text, by repealing “(*ordre public*)”.

(2) Section 6(2) is amended, in the English text, by repealing “(*ordre public*)”.

11. Power of Commissioner of Police to prohibit notified public meeting

(1) Section 9(1) is amended, in the English text, by repealing “(*ordre public*)”.

(2) Section 9(4) is amended, in the English text, by repealing “(*ordre public*)”.

12. Requirements and conditions applying to public meetings

Section 11(2) is amended, in the English text, by repealing “(*ordre public*)”.

13. Right of Commissioner of Police to object to public procession

(1) Section 14(1) is amended, in the English text, by repealing “(*ordre public*)”.

(2) Section 14(5) is amended, in the English text, by repealing “(*ordre public*)”.

14. Requirements and conditions applying to public processions

Section 15(2) is amended, in the English text, by repealing “(*ordre public*)”.

PART 4

AMENDMENTS RELATING TO SUICIDE OF ANOTHER PERSON

Homicide Ordinance

15. Suicide pacts

- (1) Section 5(1) of the Homicide Ordinance (Cap. 339) is amended by repealing “killing himself or”.
- (2) Section 5(2) is amended by repealing “killing himself or”.

PART 5

PENALTY FOR PERVERTING THE COURSE OF JUSTICE AT COMMON LAW

Criminal Procedure Ordinance

16. Punishment of indictable offences

- (1) Section 101I(1) of the Criminal Procedure Ordinance (Cap. 221) is amended by repealing “subsection (2)” and substituting “subsections (2) and (5)”.
- (2) Section 101I is amended by adding –
 - “(5) Where a person is convicted of an offence of perverting the course of justice at common law, he shall be liable to be sentenced at the discretion of the court to imprisonment for any term and a fine of any amount, subject to any limitations as to the maximum term or terms of imprisonment and the maximum fine which such court may lawfully impose under the District Court Ordinance (Cap. 336) or the Magistrates Ordinance (Cap. 227).
 - (6) In subsection (5), “court” (法院) includes the District Court and a magistrate.”.

PART 6

POWER OF MAGISTRATE TO AWARD COSTS

Fixed Penalty (Criminal Proceedings) Ordinance

17. Recovery of fixed penalty in certain circumstances

(1) Section 3A(1) of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) is amended by repealing “penalty,” and substituting “penalty and costs of not less than \$80 or more than \$1,500,”.

(2) Section 3A(4) is amended by repealing “and additional penalty” and substituting “, additional penalty and costs”.

(3) Section 3A(5) is amended by repealing “and additional penalty” and substituting “, additional penalty and costs”.

18. Review of proceedings

(1) Section 3B(1)(b)(ii) is amended by adding “and costs of not less than \$80 or more than \$1,500” before the full stop.

(2) Section 3B(4) is amended by repealing “and the additional penalty” and substituting “, additional penalty and costs”.

Consequential Amendments

19. Effect of non-payment of fines

(1) Section 10(1)(b) is amended by repealing “and the additional penalty” and substituting “, the additional penalty and costs”.

(2) Section 10(1)(c) is amended by repealing “and the additional penalty” and substituting “, the additional penalty and costs”.

(3) Section 10(2)(a) is amended by repealing “and additional penalty” and substituting “, additional penalty and costs”.

(4) Section 10(2)(b) is amended by repealing “and additional penalty” and substituting “, additional penalty and costs”.

- (5) Section 10(5)(b) is amended –
 - (a) by repealing “and any additional penalty” and substituting “, any additional penalty and costs”;
 - (b) by adding “or costs” after “penalties”.
- (6) Section 10(5)(c) is amended –
 - (a) by repealing “and additional penalty” and substituting “, additional penalty and costs”;
 - (b) by adding “or costs” after “penalties”.

20. Distress in default of payment under section 3A order

Section 10A(1) is amended by repealing “or any additional penalty” and substituting “, any additional penalty or costs”.

PART 7

WASTED COSTS IN CRIMINAL PROCEEDINGS

Costs in Criminal Cases Ordinance

21. Interpretation

Section 2 of the Costs in Criminal Cases Ordinance (Cap. 492) is amended by repealing the definition of “wasted costs” and substituting –

““wasted costs” (虛耗訟費) means any costs incurred by a party to the proceedings –

- (a) as a result of –
 - (i) any improper or unreasonable act or omission; or
 - (ii) any undue delay or any other misconduct or default,
 on the part of any representative or any employee of a representative; or

- (b) which, in the light of any such act, omission, delay, misconduct or default occurring after they were incurred, the court considers it is unreasonable to expect that party to the proceedings to pay.”.

22. Section substituted

Section 18 is repealed and the following substituted –

“18. **Liability of legal or other representatives for wasted costs**

(1) In any criminal proceedings a court or a judge may order the legal or other representative concerned to meet the payment of any wasted costs or any part thereof.

(2) No order under subsection (1) shall be made unless the legal or other representative concerned has been given a reasonable opportunity to appear before the court or the judge and show cause why the order should not be made.

(3) When determining whether or not to make an order under subsection (1), the court or the judge shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(4) Subject to subsection (5), any wasted costs ordered to be paid by a legal or other representative under subsection (1) shall be a debt due to the party to the proceedings in whose favour such order was made from the representative and enforceable as a civil debt.

(5) Where an order is made under subsection (1) in favour of a legally aided defendant, the wasted costs ordered to be paid shall be a debt due to the Director of Legal Aid and enforceable as a civil debt by the Director in his own name.

(6) Where an order is made under subsection (1) against a legal officer or a Legal Aid Officer having or exercising a right of audience or conducting litigation on behalf of the Government, the wasted costs ordered to be paid shall be charged on the general revenue.”.

PART 8

AMENDMENTS TO PROVISIONS PROVIDING THAT THE DECISION OF THE COURT OF FIRST INSTANCE ON AN APPEAL IS FINAL

Fire Service (Installation Contractors) Regulations

23. Appeal from disciplinary board

Regulation 12(4) of the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg. A) is repealed.

Related Amendments

24. Disciplinary proceedings

- (1) Regulation 10(4)(a) is repealed and the following substituted –
 - “(a) if an appeal is lodged with the Court of First Instance under regulation 12(1), until the appeal is finally determined; or”.
- (2) Regulation 10 is amended by adding –
 - “(5) For the purposes of paragraph (4), an appeal to the Court of First Instance shall be deemed to be finally determined when the earliest of the following events occurs, whichever is applicable in the circumstances –
 - (a) when the appeal to the Court of First Instance is withdrawn or abandoned;
 - (b) subject to paragraph (6), when the specified period expires without an appeal

- having been lodged to the Court of Appeal against a judgment of the Court of First Instance made under regulation 12(1);
- (c) subject to paragraph (6), if, before the expiry of the specified period referred to in sub-paragraph (b), an appeal is lodged to the Court of Appeal, when the appeal to the Court of Appeal is withdrawn or abandoned;
 - (d) when the specified period expires without an application for leave to appeal having been made to the Court of Appeal;
 - (e) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Appeal –
 - (i) when the application is withdrawn or abandoned;
 - (ii) if the application is refused, when the specified period expires without an application for leave to appeal having been made to the Court of Final Appeal; or
 - (iii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of; or
 - (f) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Final Appeal –

- (i) when the application is withdrawn, abandoned or refused; or
- (ii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of.

(6) Notwithstanding paragraph (5)(b) and (c), an appeal to the Court of First Instance shall be deemed to be finally determined, if, in respect of a judgment of the Court of First Instance made under regulation 12(1), a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and leave to appeal is granted under section 27D of that Ordinance, when the appeal to the Court of Final Appeal under 27B of that Ordinance is withdrawn, abandoned or disposed of, but only if the following conditions are satisfied –

- (a) the certificate is granted on an application made within 14 days from the date on which the judgment is given as referred to in section 27C(3) of that Ordinance; and
- (b) the leave to appeal is granted on an application made within 28 days from the date on which a certificate is granted under section 27C of that Ordinance as referred to in section 27D(1) of that Ordinance or, on an application made within that period of 28 days for an extension of time, such other longer period as so extended.

(7) In paragraph (5) –

“application for leave to appeal” (上訴許可申請) means an application made to the Court of Appeal or the Court of Final Appeal under section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) for leave to appeal to the Court of Final Appeal from a judgment of the Court of Appeal;

“specified period” (指明限期) –

(a) in the case of an appeal to the Court of Appeal against a judgment of the Court of First Instance made under regulation 12(1), means –

(i) subject to sub-sub-paragraph (ii), the period of 28 days within which the notice of appeal referred to in Order 59, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is required to be served; or

(ii) if, on an application made within the period of 28 days referred to in sub-sub-paragraph (i), the Court of Appeal extends that period, the period as so extended, however, in a case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the following period of time shall be disregarded in

determining the period of 28 days referred to in sub-sub-paragraph (i) or (ii) –

- (iii) where an application has been made under section 27C of that Ordinance (that is, within 14 days from the date on which the judgment is given as referred to in section 27C(3) of that Ordinance), the period from the date on which the judgment is given to the date on which the application is determined; or
 - (iv) where an application has been made under section 27D of that Ordinance (that is, within 28 days from the date on which a certificate is granted under section 27C of that Ordinance as referred to in section 27D(1) of that Ordinance or, on an application made within that period of 28 days for an extension of time, such other longer period as so extended), the period from the date on which the judgment is given to the date on which the application is determined;
- (b) in the case of an application for leave to appeal made to the Court of Appeal, means –

- (i) subject to sub-sub-paragraph (ii), the period of 28 days within which the notice of motion referred to in section 24(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
 - (ii) if, on an application made within the period of 28 days referred to in sub-sub-paragraph (i), the Court of Appeal extends that period, the period as so extended; or
- (c) in the case of an application for leave to appeal made to the Court of Final Appeal, means –
 - (i) subject to sub-sub-paragraph (ii), the period of 28 days within which the notice of motion referred to in section 24(4) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
 - (ii) if, on an application made within the period of 28 days referred to in sub-sub-paragraph (i), the Court of Final Appeal extends that period, the period as so extended.”.

Pharmacy and Poisons Ordinance

25. Powers of a Disciplinary Committee

Section 16(3)(b) of the Pharmacy and Poisons Ordinance (Cap. 138) is amended by repealing everything after “Committee” and substituting a full stop.

26. Right of appeal to Court of First Instance

Section 30A is amended by repealing everything after “that decision” and substituting a full stop.

Related Amendments

27. Powers of a Disciplinary Committee

- (1) Section 16 (5)(b) is repealed and the following substituted –
 - “(b) where there is an appeal to the Court of First Instance, until such appeal is finally determined.”.
- (2) Section 16 is amended by adding –
 - “(7) For the purposes of subsection (5), an appeal to the Court of First Instance shall be deemed to be finally determined when the earliest of the following events occurs, whichever is applicable in the circumstances –
 - (a) when the appeal to the Court of First Instance is withdrawn or abandoned;
 - (b) subject to subsection (8), when the specified period expires without an appeal having been lodged to the Court of Appeal against a judgment of the Court of First Instance made under subsection (3);
 - (c) subject to subsection (8), if, before the expiry of the specified period referred to in paragraph (b), an appeal is lodged to the Court of Appeal, when the appeal to

- the Court of Appeal is withdrawn or abandoned;
- (d) when the specified period expires without an application for leave to appeal having been made to the Court of Appeal;
 - (e) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Appeal –
 - (i) when the application is withdrawn or abandoned;
 - (ii) if the application is refused, when the specified period expires without an application for leave to appeal having been made to the Court of Final Appeal; or
 - (iii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of; or
 - (f) if, before the expiry of the specified period, an application for leave to appeal is made to the Court of Final Appeal –
 - (i) when the application is withdrawn, abandoned or refused; or
 - (ii) if the application is granted, when the appeal to the Court of Final Appeal is withdrawn, abandoned or disposed of.

(8) Notwithstanding subsection (7)(b) and (c), an appeal to the Court of First Instance shall be deemed to be finally determined, if, in respect of a judgment of the Court of First Instance made under subsection (3), a certificate is granted under section 27C of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and leave to appeal is granted under section 27D of that Ordinance, when the appeal to the Court of Final Appeal under 27B of that Ordinance is withdrawn, abandoned or disposed of, but only if the following conditions are satisfied –

- (a) the certificate is granted on an application made within 14 days from the date on which the judgment is given as referred to in section 27C(3) of that Ordinance; and
- (b) the leave to appeal is granted on an application made within 28 days from the date on which a certificate is granted under section 27C of that Ordinance as referred to in section 27D(1) of that Ordinance or, on an application made within that period of 28 days for an extension of time, such other longer period as so extended.

(9) In subsection (7) –
“application for leave to appeal” (上訴許可申請) means an application made to the Court of Appeal or the Court of Final Appeal under section 24 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) for leave to appeal to the Court of Final Appeal from a judgment of the Court of Appeal;

“specified period” (指明限期) –

(a) in the case of an appeal to the Court of Appeal against a judgment of the Court of First Instance made under subsection (3), means –

- (i) subject to subparagraph (ii), the period of 28 days within which the notice of appeal referred to in Order 59, rule 4(1) of the Rules of the High Court (Cap. 4 sub. leg. A) is required to be served; or
- (ii) if, on an application made within the period of 28 days referred to in subparagraph (i), the Court of Appeal extends that period, the period as so extended,

however, in a case where an appeal may lie from a judgment of the Court of First Instance under Division 3 of Part II of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), the following period of time shall be disregarded in determining the period of 28 days referred to in subparagraph (i) or (ii) –

- (iii) where an application has been made under section 27C of that Ordinance (that is, within 14 days from the date on which the judgment is given as referred to in section 27C(3) of that

- Ordinance), the period from the date on which the judgment is given to the date on which the application is determined; or
- (iv) where an application has been made under section 27D of that Ordinance (that is, within 28 days from the date on which a certificate is granted under section 27C of that Ordinance as referred to in section 27D(1) of that Ordinance or, on an application made within that period of 28 days for an extension of time, such other longer period as so extended), the period from the date on which the judgment is given to the date on which the application is determined;
- (b) in the case of an application for leave to appeal made to the Court of Appeal, means –
- (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(2) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or

- (ii) if, on an application made within the period of 28 days referred to in subparagraph (i), the Court of Appeal extends that period, the period as so extended; or
- (c) in the case of an application for leave to appeal made to the Court of Final Appeal, means –
 - (i) subject to subparagraph (ii), the period of 28 days within which the notice of motion referred to in section 24(4) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) is required to be filed; or
 - (ii) if, on an application made within the period of 28 days referred to in subparagraph (i), the Court of Final Appeal extends that period, the period as so extended.”.

Lifts and Escalators (Safety) Ordinance

28. Appeals from disciplinary board

Section 11(4) of the Lifts and Escalators (Safety) Ordinance (Cap. 327) is repealed.

29. Appeals from disciplinary board

Section 11I(4) is repealed.

30. Appeal to Court of First Instance on point of law

Section 18(4) is repealed.

PART 9

AMENDMENTS CONSEQUENTIAL TO THE RULES OF THE HIGH COURT (AMENDMENT) RULES 2000 IN RELATION TO THE TIME FOR SERVING NOTICE OF MOTION OF APPEAL

Rules of the High Court

31. Appeals against decree nisi

Order 59, rule 16(2) of the Rules of the High Court (Cap. 4 sub. leg. A) is amended by repealing “6 weeks” and substituting “28 days”.

Legal Practitioners Ordinance

32. Appeal and saving

Section 13(1) of the Legal Practitioners Ordinance (Cap. 159) is amended by repealing “6 weeks” and substituting “28 days”.

33. Appeal to Court of Appeal

Section 37B(1) is amended by repealing “6 weeks” and substituting “28 days”.

34. Appeal and saving

Section 40M(1) is amended by repealing “6 weeks” and substituting “28 days”.

PART 10

AMENDMENTS RELATING TO THE LEGAL PRACTITIONERS ORDINANCE

Legal Practitioners Ordinance

35. Interpretation

Section 2(1) of the Legal Practitioners Ordinance (Cap. 159) is amended, in the definition of “Postgraduate Certificate in Laws”, by repealing “or the City Polytechnic of Hong Kong” and substituting “, the City Polytechnic of Hong Kong or The Chinese University of Hong Kong”.

36. Employment by solicitor or foreign lawyer of persons struck off or suspended

(1) Section 53(1)(a) is amended by repealing everything after “solicitor or” and substituting “is an undischarged bankrupt;”.

(2) Section 53(1)(b) is amended by repealing the full stop and substituting “; or”.

(3) Section 53(1) is amended by adding –

“(c) is a person referred to in section 39A(1) who –

- (i) has not been registered as a foreign lawyer under that section; and
- (ii) is an undischarged bankrupt.”.

PART 11

AMENDMENTS TO REMOVE CERTAIN MINOR INCONSISTENCIES BETWEEN THE ENGLISH AND CHINESE TEXTS OF THE PREVENTION OF BRIBERY ORDINANCE AND THE INDEPENDENT COMMISSION AGAINST CORRUPTION ORDINANCE

Prevention of Bribery Ordinance

37. Bribery

(1) Section 4(1)(b) of the Prevention of Bribery Ordinance (Cap. 201) is amended, in the Chinese text, by repealing “由本人” and substituting “由該人員”.

(2) Section 4(1)(b) is amended, in the Chinese text, by repealing “其本人” and substituting “該人員”.

(3) Section 4(2)(b) is amended, in the Chinese text, by repealing “由本人” and substituting “由該人員”.

(4) Section 4(2)(b) is amended, in the Chinese text, by repealing “其本人” and substituting “該人員”.

38. Power of court to prohibit employment of convicted person

In the Chinese text, section 33A(1)(c) is repealed and the following substituted –

“(c) 如屬其他情況，則禁止該人以合夥人或經理身分或以法庭決定的其他身分，直接或間接參與管理法庭決定的合夥、商號或人士，或直接或間接參與管理屬法庭決定的類別的合夥、商號或人士；及”.

Independent Commission Against Corruption Ordinance

39. Appointment of officers

Section 8(4) of the Independent Commission Against Corruption Ordinance (Cap. 204) is amended, in the Chinese text, by repealing “公職” and substituting “公務”.

40. Procedure after arrest

Section 10A(2)(b)(ii) is amended, in the Chinese text, by repealing everything after “他” and substituting “作出廉署高級人員所要求的擔保，以及提供廉署高級人員所要求的擔保人(如該人員要求提供擔保人的話)；或”.

41. Taking of non-intimate samples

Section 10E(7)(b) is amended, in the Chinese text, by repealing “公職” and substituting “公務”.

Independent Commission Against Corruption (Treatment of Detained Persons) Order

42. Notification to relatives, etc.

Paragraph 3(b) of the Independent Commission Against Corruption (Treatment of Detained Persons) Order (Cap. 204 sub. leg. A) is amended, in the Chinese text, by repealing “公職” and substituting “公務”.

PART 12

NEW POWERS TO SUBSTITUTE DATES AND TITLES OF SUBSIDIARY LEGISLATION

Interpretation and General Clauses Ordinance

43. Sections added

The Interpretation and General Clauses Ordinance (Cap. 1) is amended by adding –

“98B. Power to substitute dates

(1) The Secretary for Justice may, by order published in the Gazette, amend any Ordinance to effect the replacement of a reference to a date in the form of a description by the actual calendar date concerned.

(2) An amendment under subsection (1) is not to be construed as changing the legal effect of the affected provision.

98C. Power to substitute title of subsidiary legislation

(1) The Secretary for Justice may, by order published in the Gazette, amend any subsidiary legislation to effect the replacement of a general reference to another subsidiary legislation by –

- (a) the title or citation of that other subsidiary legislation;
- (b) its number among the subsidiary legislation of the year in which it was enacted; or
- (c) any chapter number lawfully given to it under the authority of any Ordinance providing for the issue of a revised or other edition of the laws of Hong Kong.

(2) An amendment under subsection (1) is not to be construed as changing the legal effect of the affected provision.”.

PART 13

MINOR AND TECHNICAL AMENDMENTS

Division 1 – Provisions relating to adoption

Adoption Ordinance

44. Relevant provisions of Convention on Protection of Children and Co-operation in respect of Intercountry Adoption

Schedule 3 to the Adoption Ordinance (Cap. 290) is amended, in Article 16(1)(a), in the Chinese text, by repealing “可被領養程度” and substituting “是否可受領養”.

Adoption Rules

45. Notice of hearing

Rule 16 of the Adoption Rules (Cap. 290 sub. leg. A) is amended, in the English text, in the second proviso, in paragraph (i), by repealing “Women” and substituting “Children”.

46. Forms

(1) Schedule 1 is amended, in the Annex to Form 1, by adding “(if applicable)” after “Chinese Commercial Code”.

(2) Schedule 1 is amended, in Form 4 –

(a) in the second paragraph –

(i) by repealing “[Whereas” and substituting “Whereas”;

(ii) by repealing “relates]⁽⁴⁾” and substituting “relates”;

(b) in the attesting paragraph –

(i) by repealing “at⁽⁸⁾” and substituting “at”;

(ii) by repealing “[who” and substituting “who”;

- (iii) by repealing “for adoption]⁽⁴⁾” and substituting “for adoption”;
- (c) by repealing note (4).
- (3) Schedule 1 is amended, in Form 4A, by repealing “at⁽⁵⁾” and substituting “at”.
- (4) Schedule 1 is amended, in Form 4B, in the Chinese text –
 - (a) in the heading, by repealing “繼父母” and substituting “繼父/繼母”;
 - (b) in the first paragraph, by repealing “繼父母” and substituting “繼父/繼母”.
- (5) Schedule 1 is amended, in Form 7, in the Chinese text, in the third paragraph, by repealing “繼父母” and substituting “繼父/繼母”.
- (6) Schedule 1 is amended, in Form 8, in the Chinese text, in the third paragraph, by repealing “繼父母” and substituting “繼父/繼母”.

Convention Adoption Rules

47. Appointment of guardian ad litem

Rule 11(2) of the Convention Adoption Rules (Cap. 290 sub. leg. D) is amended, in the English text, by repealing “who” and substituting “that”.

48. Forms

- (1) Schedule 1 is amended, in the Annex to Form C1 –
 - (a) by adding “(if applicable)” after “HKID Number”;
 - (b) by adding “(if applicable)” after “Chinese Commercial Code”.
- (2) Schedule 1 is amended, in Form C4 –
 - (a) in the second paragraph –
 - (i) by repealing “[Whereas” and substituting “Whereas”;

- (ii) by repealing “relates]⁽⁴⁾” and substituting “relates”;
- (b) in the attesting paragraph –
 - (i) by repealing “[who” and substituting “who”;
 - (ii) by repealing “for adoption]⁽⁴⁾” and substituting “for adoption”;
- (c) by repealing note (4).
- (3) Schedule 1 is amended, in Form C5, in the Chinese text –
 - (a) in the heading, by repealing “繼父母” and substituting “繼父/繼母”;
 - (b) in the first paragraph, by repealing “繼父母” and substituting “繼父/繼母”.
- (4) Schedule 1 is amended, in Form C7, in the Chinese text, in the third paragraph, by repealing “繼父母” and substituting “繼父/繼母”.

Division 2 – Provisions relating to PPS

Fixed Penalty (Traffic Contraventions) Regulations

49. Payment of fixed penalty

Regulation 3(1)(d) of the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237 sub. leg. A) is amended, in the English text, by repealing “the Payment By Phone Service” and substituting “PPS”.

50. Schedule amended

- (1) The Schedule is amended, in Form 1, in the **Payment Instructions** –
 - (a) in paragraph 1(a) –
 - (i) in the Chinese version, by repealing “款服” and substituting “費服”;
 - (ii) in the English version, by repealing “Service”;

(b) in paragraph 1(b), in the English version, by repealing “**Payment By Phone Service (PPS)**” and substituting “**PPS**”.

(2) The Schedule is amended, in Form 2, in the **PAYMENT INSTRUCTIONS** –

- (a) in paragraph 1(a) –
- (i) in the Chinese version, by repealing “款服” and substituting “費服”;
 - (ii) in the English version, by repealing “Service”;
- (b) in paragraph 1(b), in the English version, by repealing “**Payment By Phone Service (PPS)**” and substituting “**PPS**”.

Fixed Penalty (Criminal Proceedings) Regulations

51. Payment of fixed penalty

Regulation 3(1)(d) of the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg. A) is amended, in the English text, by repealing “the Payment By Phone Service” and substituting “PPS”.

52. Schedule amended

(1) The Schedule is amended, in Form 1, in the **PAYMENT INSTRUCTIONS** –

- (a) in paragraph 1(a) –
- (i) in the Chinese version, by repealing “款服” and substituting “費服”;
 - (ii) in the English version, by repealing “Service”;
- (b) in paragraph 1(b), in the English version, by repealing “**Payment By Phone Service (PPS)**” and substituting “**PPS**”.

(2) The Schedule is amended, in Form 2, in the **PAYMENT INSTRUCTIONS** –

- (a) in paragraph 1(a) –
 - (i) in the Chinese version, by repealing “款服” and substituting “費服”;
 - (ii) in the English version, by repealing “Service”;
- (b) in paragraph 1(b), in the English version, by repealing “**Payment By Phone Service (PPS)**” and substituting “**PPS**”.

Housing (Traffic Contraventions) (Fixed Penalty) Bylaw

53. Payment of fixed penalty

Section 9(1)(d) of the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw (Cap. 283 sub. leg. C) is amended by repealing “the Payment By Phone Service” and substituting “PPS”.

54. Forms

- (1) Schedule 3 is amended, in Form 1, in the **Payment Instructions** –
 - (a) in paragraph 1(a) –
 - (i) in the Chinese version, by repealing “款服” and substituting “費服”;
 - (ii) in the English version, by repealing “Service”;
 - (b) in paragraph 1(b) –
 - (i) in the Chinese version –
 - (A) by repealing “聆” and substituting “靈”;
 - (B) by repealing “聆” and substituting “靈”;
 - (ii) in the English version, by repealing “**Payment By Phone Service (PPS)**” and substituting “**PPS**”;

(c) in paragraph 1(c), in the Chinese version, by repealing “聆” and substituting “靈”.

(2) Schedule 3 is amended, in Form 2, in the **PAYMENT INSTRUCTIONS** –

(a) in paragraph 1(a) –

(i) in the Chinese version, by repealing “款服” and substituting “費服”;

(ii) in the English version, by repealing “Service”;

(b) in paragraph 1(b) –

(i) in the Chinese version –

(A) by repealing “聆” and substituting “靈”;

(B) by repealing “聆” and substituting “靈”;

(ii) in the English version, by repealing “**Payment by Phone Service (PPS)**” and substituting “**PPS**”;

(c) in paragraph 1(c), in the Chinese version, by repealing “聆” and substituting “靈”.

Fixed Penalty (Public Cleanliness Offences) Regulation

55. Payment of fixed penalty

Section 3(1)(d) of the Fixed Penalty (Public Cleanliness Offences) Regulation (Cap. 570 sub. leg. A) is amended by repealing “the Payment By Phone Service” and substituting “PPS”.

56. Schedule amended

(1) The Schedule is amended, in Form 1, in the **PAYMENT INSTRUCTIONS** –

(a) in paragraph 1(a) –

(i) in the Chinese version, by repealing “款服” and substituting “費服”;

- (ii) in the English version, by repealing “Service”;
- (b) in paragraph 1(b) –
 - (i) in the Chinese version –
 - (A) by repealing “聆” and substituting “靈”;
 - (B) by repealing “聆” and substituting “靈”;
 - (ii) in the English version, by repealing “**using Payment By Phone Service (PPS)**” and substituting “**Phone using PPS**”;
- (c) in paragraph 1(c) –
 - (i) in the Chinese version, by repealing “聆” and substituting “靈”;
 - (ii) in both the Chinese and English versions, by repealing “*http://www.info.gov.hk/tsy*” and substituting “*http://www.try.gov.hk*”;
- (d) in paragraph 2, in the Chinese version, by repealing “聆” and substituting “靈”.

(2) The Schedule is amended, in Form 2, in the **PAYMENT INSTRUCTIONS** –

- (a) in paragraph 1(a) –
 - (i) in the Chinese version, by repealing “款服” and substituting “費服”;
 - (ii) in the English version, by repealing “Service”;
- (b) in paragraph 1(b) –
 - (i) in the Chinese version –
 - (A) by repealing “聆” and substituting “靈”;
 - (B) by repealing “聆” and substituting “靈”;

- (ii) in the English version, by repealing “**using Payment By Phone Service (PPS)**” and substituting “**Phone using PPS**”;
- (c) in paragraph 1(c) –
 - (i) in the Chinese version, by repealing “聆” and substituting “靈”;
 - (ii) in both the Chinese and English versions, by repealing “*http://www.info.gov.hk/tsy*” and substituting “*http://www.try.gov.hk*”;
- (d) in paragraph 2, in the Chinese version, by repealing “聆” and substituting “靈”.

Division 3 – Provisions relating to “use by” date

Food and Drugs (Composition and Labelling) Regulations

57. Offences and penalties

Regulation 5(1A) of the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) is amended, in the Chinese text, by repealing “期前” and substituting “期或之前”.

58. Marking and labelling of prepackaged foods

(1) Schedule 3 is amended, in paragraph 4, in the heading, in the Chinese text, by repealing “前食” and substituting “或之前食”.

(2) Schedule 3 is amended, in paragraph 4(1)(b), by repealing “期前” and substituting “期或之前”.

(3) Schedule 3 is amended, in paragraph 4(3), by repealing “期前” and substituting “期或之前”.

(4) Schedule 3 is amended, in paragraph 4(3)(a), by repealing “期前” and substituting “期或之前”.

(5) Schedule 3 is amended, in paragraph 4(5), by repealing “期前” and substituting “期或之前”.

(6) Schedule 3 is amended, in paragraph 4(6), by repealing “前食” and substituting “或之前食”.

(7) Schedule 3 is amended, in paragraph 4(7), by repealing “前食” and substituting “或之前食”.

Division 4 – Provisions relating to substitution of English titles of legislation appearing in the Chinese text

Dangerous Drugs Ordinance

59. First Schedule amended

The First Schedule to the Dangerous Drugs Ordinance (Cap. 134) is amended, in Part II, in the proviso to paragraph 16B, in the Chinese text, by repealing “《 Pharmacy and Poisons Regulations 》” and substituting “《 藥劑業及毒藥規例 》”.

**Merchant Shipping (Prevention and Control of Pollution)
(Charges for Discharge of Polluting Waste) Regulation**

60. Interpretation

Section 2 of the Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation (Cap. 413 sub. leg. I) is amended, in the Chinese text, in the definition of “有毒液體物質”, by repealing “《 Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations 》” and substituting “《 商船(控制散裝有毒液體物質污染)規例 》”.

Coroners Ordinance

61. Inquests in respect of deaths arising out of certain civil aviation accidents or merchant shipping casualties

Section 18(a)(i) of the Coroners Ordinance (Cap. 504) is amended, in the Chinese text, by repealing “《 Hong Kong Civil Aviation (Investigation of Accidents) Regulations 》” and substituting “《 香港民航(意外調查)規例 》”.

Division 5 – Provisions relating to the commencement of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006

Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006

62. Short title and commencement

Section 1 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) is amended by adding –

“(3) Without prejudice to subsection (2) and section 20 of the Interpretation and General Clauses Ordinance (Cap. 1), a notice –

- (a) may bring Part 3 into operation, while excepting section 15 in so far as that section relates to the adding of any or all of section 10AB(5), (6) and (10)(d) and (e) to the Employees’ Compensation Ordinance (Cap. 282); and
- (b) may bring Part 4 into operation, while excepting section 25 in so far as that section relates to the adding of any or all of section 12AA(4), (5) and (9)(d) and (e) to the Pneumoconiosis (Compensation) Ordinance (Cap. 360).”.

63. Transitional

Section 22 is amended, by repealing the new section 55(10) and substituting –

“(10) An amendment to this Ordinance made by any provision of Part 3 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) (“2006 Ordinance”) does not apply to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before the commencement of that provision. The provisions of this Ordinance as were in force immediately before that commencement shall continue to apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening before that commencement as if the amendment had not been made.

(11) Despite subsection (10), as soon as any provision of section 10AB(5), (6) and (10)(d) and (e) (“relevant provision”) has commenced, the relevant provision shall apply with respect to claims for compensation or other rights, obligations or liabilities in respect of accidents happening on or after the first commencement of section 10AB as far as cost of medicines incurred on or after the commencement of the relevant provision is concerned.

(12) In subsection (11) –

- (a) the commencement of a provision of section 10AB means the day appointed for the coming into operation of section 15 of the 2006 Ordinance in so far as that section 15 relates to the adding of that provision of section 10AB;
- (b) the first commencement of section 10AB means, where different days are appointed for the coming into operation of section 15 of the 2006 Ordinance in so far as that section 15 relates to the adding of

different provisions of section 10AB, the earliest of those days.”.

64. Section added

- (1) Section 31 is amended, in the new section 50(1) –
 - (a) by adding “any provision of” after “A reference in”;
 - (b) by repealing “the 2006 Ordinance” and substituting “the provision of the 2006 Ordinance that amends that provision of this Ordinance”.
- (2) Section 31 is amended, in the new section 50(2) –
 - (a) by repealing “Section 12AA does not” and substituting “No provision in section 12AA shall”;
 - (b) by repealing “the 2006 Ordinance” and substituting “that provision of section 12AA”.
- (3) Section 31 is amended, in the new section 50, by adding –
 - “(2A) Despite subsection (2), as soon as any provision of section 12AA(4), (5) and (9)(d) and (e) (“relevant provision”) has commenced, the relevant provision shall apply for the purpose of determining the entitlement to cost of medicines that is incurred on or after the commencement of the relevant provision, regardless of when the medicines are prescribed.
 - (2B) In subsections (2) and (2A), the commencement of a provision of section 12AA means the day appointed for the coming into operation of section 25 of the 2006 Ordinance in so far as that section 25 relates to the adding of that provision of section 12AA.”.
- (4) Section 31 is amended, in the new section 50(3) –
 - (a) by adding “any provision of” before “the 2006 Ordinance”;
 - (b) by adding “that provision of” before “that Ordinance” where it twice appears.

Division 6 – Miscellaneous

Probate and Administration Ordinance

65. Inspection of safe deposit box and inventory of contents

Section 60D(11) of the Probate and Administration Ordinance (Cap. 10) is amended by adding “copy of the” before “inventory kept”.

Pawnbrokers Regulations

66. First Schedule amended

The First Schedule to the Pawnbrokers Regulations (Cap. 166 sub. leg. A) is amended, in Form 1, by repealing Note 4.

Merchant Shipping (Prevention of Pollution by Sewage) Regulation

67. Restriction on discharge of sewage into sea

Section 28(2) of the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413 sub. leg. K) is amended by repealing “the other” and substituting “any other”.

Fugitive Offenders Ordinance

68. General restrictions on surrender

The Chinese text of section 5(1)(e) of the Fugitive Offenders Ordinance (Cap. 503) is repealed and the following substituted –

- “(e) 假設該項罪行在香港發生，香港法律中關於曾就同一罪行獲裁定無罪或被定罪的法律便會不容許就該項罪行作出檢控、判刑或強制執行判刑。”

**Construction Industry Levy (Miscellaneous Amendments)
Ordinance 2004**

69. Furnishing of information and production of documents

Section 34(c) of the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2004 (3 of 2004) is amended, by adding “where it first appears” after ““being””.

Statute Law (Miscellaneous Provisions) Ordinance 2005

70. Interpretation

Section 169 of the Statute Law (Miscellaneous Provisions) Ordinance 2005 (10 of 2005) is amended, in the English text, by repealing “the Deputy” and substituting “any Deputy”.

PART 14

AMENDMENTS TO ACHIEVE INTERNAL CONSISTENCY AND
CONSISTENCY BETWEEN THE ENGLISH AND CHINESE TEXTS

Export (Certificates of Origin) Regulations

71. Interpretation

Regulation 2 of the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg. H) is amended, in the definition of “country or territory of destination”, by adding “或地區” after “國家”.

Inland Revenue Ordinance

72. Exemption of charitable bodies

Section 88 of the Inland Revenue Ordinance (Cap. 112) is amended, in the Chinese text, by repealing “或信託，” and substituting “或慈善信託，”.

Consequential Amendments

Inland Revenue (Amendment) Ordinance 2004

73. Exemption of charitable bodies

Section 19 of the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) is repealed.

Land Registration Fees Regulations

74. Duty to grant exemption

Regulation 4(1) of the Land Registration Fees Regulations (Cap. 128 sub. leg. B) is amended, in the Chinese text, by repealing “、(b) 或 (c)” and substituting “或 (b)”.

Birth Certificate (Shortened Form) Regulations

75. Manner of compilation of short certificate and particulars to be contained therein

Regulation 5(2)(b) of the Birth Certificate (Shortened Form) Regulations (Cap. 174 sub. leg. A) is amended, in the Chinese text, by repealing “父親的” and substituting “母親的”.

Prison Rules

76. Removal from association

Rule 68B(5) of the Prison Rules (Cap. 234 sub. leg. A) is amended, in the Chinese text, by repealing “監督” and substituting “署長”.

Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation

77. Offences and penalties

(1) Section 32(7) of the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K) is amended by repealing “, 23 and 24” and substituting “and 23”.

(2) Section 32(8) is amended by repealing “sections 23 and 24” and substituting “section 23”.

Companies (Amendment) Ordinance 2004

78. Amendments to the Companies Ordinance Relating to Oversea Companies and Incorporation Procedures

Schedule 2 to the Companies (Amendment) Ordinance 2004 (30 of 2004) is amended, in section 44, in the new section 341(1), in the definition of “pre-amended Ordinance”, in paragraph (c), in the Chinese text, by repealing “(號) 第” and substituting “(號) 附表 2 第”.

Aviation Security (Amendment) Ordinance 2005

79. Sections amended

Section 9(2)(a) of the Aviation Security (Amendment) Ordinance 2005 (14 of 2005) is amended, in the English text, by repealing “經營者” and substituting “operator”.

Explanatory Memorandum

This Bill contains miscellaneous amendments to various Ordinances.

2. The Bill is divided into 14 Parts.

PART 1

3. Part 1 (clauses 1 and 2) contains preliminary provisions stating the short title and providing for the commencement of the Bill when enacted.

PART 2

4. Part 2 (clause 3) repeals section 30A(10)(b)(i) of the Bankruptcy Ordinance (Cap. 6) to exonerate a bankrupt from his obligation to notify the trustee of bankruptcy of his temporary departure from Hong Kong. As a result of the repeal, the fact that a bankrupt is, after the commencement of his bankruptcy, absent from Hong Kong without notifying the trustee of bankruptcy will not affect the calculation of the relevant period for the discharge from bankruptcy under subsection (1) of that section.

PART 3

5. Part 3 (clauses 4 to 14) repeals the references to “(*ordre public*)” in the following Ordinances to sever “public order” in the law and order sense from “public order (*ordre public*)” which is interpreted in the same way as under the International Covenant on Civil and Political Rights as applied to Hong Kong –

- the Societies Ordinance (Cap. 151) (clauses 4 to 8); and
- the Public Order Ordinance (Cap. 245) (clauses 9 to 14).

PART 4

6. Part 4 (clause 15) repeals the words “killing himself or” from section 5(1) and (2) of the Homicide Ordinance (Cap. 339) to reflect the abolition of the offence of suicide.

PART 5

7. Part 5 (clause 16) adds a new subsection (5) to section 101I of the Criminal Procedure Ordinance (Cap. 221) to raise the maximum penalty for the offence of perverting the course of justice at common law. There will be no fixed maximum penalty, the court may impose a sentence that is appropriate to the seriousness of the offence in accordance with the established sentencing guidelines.

PART 6

8. Part 6 (clauses 17, 18, 19 and 20) amends sections 3A and 3B of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) to empower a magistrate to order a person who has committed an offence to pay costs if that person has not paid the relevant fixed penalty or notified the Commissioner of Police that he wishes to dispute liability. Consequential amendments are also made to sections 10 and 10A of that Ordinance.

PART 7

9. Part 7 (clauses 21 and 22) amends section 2 of the Costs in Criminal Cases Ordinance (Cap. 492) to enable the court in criminal cases to order a party to bear any costs incurred by another party to the same proceedings as a result of the improper or unreasonable act or omission, or undue delay or any other misconduct or default on the part of the legal or other representative of the first mentioned party. Section 18 of that Ordinance is also amended to provide that the court or the judge shall take into account the interest of fearless advocacy under the adversarial system of justice when determining whether to make such an order.

PART 8

10. Part 8 (clauses 23 to 30) amends the following Ordinances to repeal provisions providing that the decision of the Court of First Instance on an appeal is final, and provide for the events in which an appeal shall be deemed to be finally determined –

- the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg. A) (clauses 23 and 24);
- the Pharmacy and Poisons Ordinance (Cap. 138) (clauses 25, 26 and 27); and
- the Lifts and Escalators (Safety) Ordinance (Cap. 327) (clauses 28, 29 and 30).

PART 9

11. Part 9 (clauses 31 to 34) amends the following Ordinances to provide for consequential amendments omitted in previous amendment exercises –

- the Rules of the High Court (Cap. 4 sub. leg. A) (clause 31); and
- the Legal Practitioners Ordinance (Cap. 159) (clauses 32, 33 and 34).

PART 10

12. Part 10 (clauses 35 and 36) amends the Legal Practitioners Ordinance (Cap. 159) in –

- section 2(1), in the definition of “Postgraduate Certificate in Laws”, to cover the Postgraduate Certificate in Laws to be awarded by The Chinese University of Hong Kong (clause 35); and
- section 53(1) to require a firm of solicitors which intends to employ a bankrupt solicitor or foreign lawyer to apply to The Law Society of Hong Kong for written permission to do so (clause 36).

PART 11

13. Part 11 (clauses 37 to 42) amends certain provisions in the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204) to remove certain minor inconsistencies between the English and Chinese texts.

PART 12

14. Part 12 (clause 43) adds to the Interpretation and General Clauses Ordinance (Cap. 1) the following two new powers to the Secretary for Justice –

- (a) a new power to amend any Ordinance, by order published in the Gazette, to effect the replacement of a reference to a date in the form of a description by the actual calendar date concerned; and

- (b) a new power to amend any subsidiary legislation, by order published in the Gazette, to effect the replacement of a general reference to another subsidiary legislation by the title or citation of that other subsidiary legislation, or its number among the subsidiary legislation of the year in which it was enacted, or any chapter number lawfully given to it under the authority of any Ordinance providing for the issue of a revised or other edition of the laws of Hong Kong.

PART 13

15. Part 13 (clauses 44 to 70) contains minor and technical amendments to various Ordinances.

16. Division 1 of Part 13 deals with provisions relating to the subject of adoption in the following Ordinances –

- the Adoption Ordinance (Cap. 290) (clause 44);
- the Adoption Rules (Cap. 290 sub. leg. A) (clauses 45 and 46); and
- the Convention Adoption Rules (Cap. 290 sub. leg. D) (clauses 47 and 48).

17. Division 2 of Part 13 deals with provisions relating to the subject of PPS in the following Ordinances –

- the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237 sub. leg. A) (clauses 49 and 50);
- the Fixed Penalty (Criminal Proceedings) Regulations (Cap. 240 sub. leg. A) (clauses 51 and 52);
- the Housing (Traffic Contraventions) (Fixed Penalty) Bylaw (Cap. 283 sub. leg. C) (clauses 53 and 54); and
- the Fixed Penalty (Public Cleanliness Offences) Regulation (Cap. 570 sub. leg. A) (clauses 55 and 56).

18. Division 3 of Part 13 amends the Food and Drugs (Composition and Labelling) Regulations (Cap. 132 sub. leg. W) to clarify the meaning of “use by” date in the Chinese text (clauses 57 and 58).

19. Division 4 of Part 13 amends the following Ordinances to replace references in the Chinese text of those Ordinances by the English titles of certain legislation with their Chinese titles –

- the Dangerous Drugs Ordinance (Cap. 134) (clause 59);
- the Merchant Shipping (Prevention and Control of Pollution) (Charges for Discharge of Polluting Waste) Regulation (Cap. 413 sub. leg. I) (clause 60); and
- the Coroners Ordinance (Cap. 504) (clause 61).

20. Division 5 of Part 13 amends the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) (“Certification Ordinance”) to expressly enable Parts 3 and 4 of that Ordinance to be commenced with certain specified provisions excepted. Under those specified provisions, the cost of a Chinese herbal medicine is recoverable as compensation under the Employees’ Compensation Ordinance (Cap. 282) and the Pneumoconiosis (Compensation) Ordinance (Cap. 360) if the medicine is sold by a Chinese medicine trader licensed under the Chinese Medicine Ordinance (Cap. 549) or if an alternative condition is met. Similarly, the cost of a proprietary Chinese medicine is so recoverable if it is registered under the Chinese Medicine Ordinance (Cap. 549) or if an alternative condition is met. At present, not all of the provisions of the Chinese Medicine Ordinance (Cap. 549) on the licensing of Chinese medicine retailers and the registration of proprietary Chinese medicine are fully implemented. Therefore, Parts 3 and 4 of the Certification Ordinance are to be commenced with the specified provisions excepted. The effect is that the cost of a Chinese herbal medicine and the cost of a proprietary Chinese medicine will be recoverable as compensation without regard to the restrictions imposed by the specified provisions (clauses 62, 63 and 64).

21. Division 6 of Part 13 deals with miscellaneous minor and technical amendments in the following Ordinances –

- the Probate and Administration Ordinance (Cap. 10) (clause 65);
- the Pawnbrokers Regulations (Cap. 166 sub. leg. A) (clause 66);
- the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413 sub. leg. K) (clause 67);
- the Fugitive Offenders Ordinance (Cap. 503) (clause 68);
- the Construction Industry Levy (Miscellaneous Amendments) Ordinance 2004 (3 of 2004) (clause 69);
and
- the Statute Law (Miscellaneous Provisions) Ordinance 2005 (10 of 2005) (clause 70).

PART 14

22. Part 14 (clauses 71 to 79) contains amendments of a minor nature to the following Ordinances to achieve internal consistency and consistency between the English and Chinese texts –

- the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg. H) (clause 71);
- the Inland Revenue Ordinance (Cap. 112) (clause 72);
- the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) (clause 73);
- the Land Registration Fees Regulations (Cap. 128 sub. leg. B) (clause 74);
- the Birth Certificate (Shortened Form) Regulations (Cap. 174 sub. leg. A) (clause 75);
- the Prison Rules (Cap. 234 sub. leg. A) (clause 76);

- the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K) (clause 77);
- the Companies (Amendment) Ordinance 2004 (30 of 2004) (clause 78); and
- the Aviation Security (Amendment) Ordinance 2005 (14 of 2005) (clause 79).

**Proposed amendments to the Costs in Criminal Cases Ordinance
(Cap. 492) (“the CCC Ordinance”)**

Purpose of reform

The purpose of the reform is to arm the courts with an effective remedy so that any costs incurred by a party to criminal proceedings as a result of unjustifiable conduct on the part of his or her legal or other representative will be borne by that lawyer or representative. The proposed provisions are not intended to penalize lawyers, but to compensate the injured party for the loss where it would be unreasonable to expect him to pay.

Background

2. The current law regarding wasted costs incurred in criminal proceedings is set out in the CCC Ordinance. Section 18 of the CCC Ordinance provides that:

“18. Liability of legal or other representatives for wasted costs

- (1) In any criminal proceedings a court or a judge may order the legal or other representative concerned to meet the payment of any wasted costs or any part thereof.
- (2) No order under subsection (1) shall be made unless the legal or other representative concerned has been given a reasonable opportunity to appear before the court or the judge and show cause why the order should not be made.
- (3) Any wasted costs ordered to be paid by a legal or other representative under subsection (1) shall be a debt due to the party to the proceedings in whose favour such order was made from the legal or other representative and enforceable as a civil debt, and where the legal or other representative concerned was a legal officer or a Legal Aid Officer having or exercising a right of

audience or conducting litigation on behalf of the Government, shall be charged on the general revenue.”.

3. “Wasted costs” is defined under section 2 of the CCC Ordinance to mean:

- (a) any costs incurred by a party to the proceedings as a result of-
 - (i) any failure to appear; or
 - (ii) lateness,without reasonable cause leading to an otherwise avoidable adjournment on the part of any legal or other representative or any employee of a legal or other representative; or
- (b) any costs incurred by a party to the proceedings which, in the light of such failure or lateness occurring after they were incurred, the court or the judge considers it is unreasonable to expect that party to the proceedings to pay.”

4. Accordingly, the court’s jurisdiction to award wasted costs is limited to occasions when legal or other representatives fail to appear or are late. The application of the provision was criticised as being too limited in three recent judgments namely, HKSAR v. YEUNG MOK YEH [2005] 4 HKLRD 357, CACC 483/2004) delivered on 6 October 2005, HKSAR v. HO Hon-chung, Danel and others (C.A. 269/2000) delivered on 16 November 2001 and HKSAR v. CHEUNG Kwok-kuen and Others (C.A. 171/2001) delivered on 11 July 2002.

Proposal

5. It is proposed that section 2 of the CCC Ordinance² be amended to provide that –

““wasted costs” (虛耗訟費) means any costs incurred by a party to the proceedings –

- (a) as a result of –
 - (i) any improper or unreasonable act or omission; or
 - (ii) any undue delay or any other misconduct or default, on the part of any representative or any employee of a representative; or
- (b) which, in the light of any such act, omission, delay, misconduct or default occurring after they were incurred, the court considers it is unreasonable to expect that party to the proceedings to pay.”.

Public consultation and policy support

6. The Law Society, the Hong Kong Bar Association, the University of Hong Kong, the City University of Hong Kong, the Chinese University, the Director of Legal Aid, the Judiciary Administrator and the Consumer Council were consulted in August 2006 on the proposal referred to in paragraph 5 above.

² Section 2 of the CCC Ordinance provides, inter alia, that –

“2. Interpretation

In this Ordinance, unless the context otherwise requires –

“wasted costs” (虛耗訟費) means –

- (a) any costs incurred by a party to the proceedings as a result of –
 - (i) any failure to appear; or
 - (ii) lateness, without reasonable cause leading to an otherwise avoidable adjournment on the part of any legal or other representative or any employee of a legal or other representative; or
- (b) any costs incurred by a party to the proceedings which, in the light of such failure or lateness occurring after they were incurred, the court or the judge considers it is unreasonable to expect that party to the proceedings to pay.”

7. Consultation has been completed. The responses received indicate both support and opposition.

8. The Law Society and the Bar Association oppose the proposal and reiterate concerns expressed when the wasted costs provisions were considered by the Legislative Council in 1996. For example, the possibility that the threat of a wasted costs order may diminish creativity and deter legal representatives from fearlessly conducting cases in ways which they consider to be in the best interests of their clients. Lay prosecutors in various departments were also consulted and they had no objection.

9. The Consumer Council and the Legal Aid Department, support the proposal but suggest amendments to clarify the intended effect. The proposal is supported by the Judiciary. The main concern is to ensure that the purpose of deterring extremely deficient work of the nature identified in the relevant judgments of the Court of Appeal is balanced against the interest in maintaining a vibrant and uncowed adversarial component in the criminal justice system.

10. In order to recognise, in the Bill, the concerns of the legal profession, the Administration has included in the proposed amendment a provision which requires the court to take into account the public interest in fearless advocacy when determining whether or not to make a wasted costs order against a legal representative. The text of the provision (added to section 18) is –

“When determining whether or not to make an order under subsection (1), the court or judge shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.”