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16 July 2012

Miss Flora Tai
Clerk to Panel on Administration of
Justice and Legal Services
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

By Fax & By Post
Fax : 2509 9055

Dear Flora,

Panel on Administration of Justice and Legal Services

List of Follow-up Actions

I refer to the "List of follow-up actions (reflecting the position as at 24 May 2012)" (i.e. LC Paper No. CB(2)2132/11-12(03) of the Panel on Administration of Justice and Legal Services. This serves a consolidated reply for items under the Department of Justice ("DoJ").

Drafting of Legislation
(Item (1) of the list)

2. During the discussion on the item of "Drafting of Legislation" at the panel meeting on 15 December 2009, the issue of drafting of the long titles of bills was raised. The response of the Law Drafting Division is at the Annex for Members' reference.

Trial in the District Court
(Item (2) of the list)

3. Discussions on this issue have taken place with the concerned professional bodies. Upon an examination of the position in other common law jurisdictions, a series of discussions took place with representatives of the Hong Kong Bar Association and the Law Society. It was acknowledged that the focus should be on the selection criteria for venue of trial in the High Court where jury trials take place. Currently, a detailed examination with the Bar Association and the Law Society is taking place on the Prosecution guidelines for the "Mode of Trial".

4. The DoJ will continue its dialogue with the two legal professional bodies and will revert to the Panel at a suitable juncture.

Reciprocal Enforcement of Matrimonial Judgments with the Mainland
(Item (5) of the list)

5. At the meeting on 23 May 2011, the Panel asked DoJ for a timetable for the implementation of the proposed arrangement with the Mainland on reciprocal recognition and enforcement of matrimonial judgments.

6. We are fully aware of the Members' views that an arrangement should be worked out as soon as possible, and we are working towards this end. However, given the differences between the legal systems of the Mainland and Hong Kong, there are a number of issues which would need to be discussed with the Mainland side and require careful consideration. We are still at any early stage of discussion with the Mainland authorities.

Appointment of joint or joint and several attorneys under section 15(1) of the Enduring Powers of Attorney ("EPA") Ordinance
(Item (6) of the list)

7. The Bills Committee scrutinizing the EPA (Amendment) Bill 2011 asked DoJ to review in future whether there is a need to amend the requirements under section 15(1) of the EPA Ordinance (Cap. 501) for appointing attorneys to act jointly or to act jointly and severally and revert to the Panel accordingly.

8. The EPA (Amendment) Ordinance 2011 (No. 25 of 2011) was passed by the LegCo on 21 December 2011, and has just come into effect on 3 July 2012. DoJ will monitor the utilization rate of EPAs and review whether or not there is a need to amend the relevant provisions after the Ordinance (as amended) has come into operation for some time.

Yours sincerely,



(Gary Poon)
Administrative Assistant
to Secretary for Justice

Encl

Response to Members' suggestion of "developing guidelines on the drafting of the long titles of bills"

The purpose of this paper is to inform the AJLS Panel about the guidelines followed by the Law Drafting Division ("LDD") of the Department of Justice when drafting long titles, in response to Members' suggestion raised at the AJLS Panel meeting held on 15 December 2009, and to explain the background against which they have been formulated.

Basic guidelines followed by LDD

2. LDD follows the basic rules and guidelines set out below when drafting long titles¹—

- (a) The long title has to accord with Rule 50(3) of the Rules of Procedure of the Legislative Council ("RoP").²
- (b) It must be wide enough to encompass the contents of the Bill.
- (c) It should generally be specific enough to give notice of subject matter.

3. The conventions for drafting long titles are essentially cast in broad and general terms. It is not a matter on which rigid rules can be developed. Particularly, how the third guideline is given expression in an individual Bill will depend entirely on the purpose and provisions of the Bill.

Benefits of informative long titles

4. It is trite knowledge that the modern approach to law drafting aims to respond to user needs, attitudes and expectations. In this context, it is considered important that the long title should contain sufficient information to give a clear idea of the purpose of the Bill. The long title can serve the same function as a purpose clause, the aim of which is to aid the public understanding of the legislation. It can serve as a guide to the purpose of an

¹ Paragraph 2.1.7 of recent LDD publication "Drafting Legislation in Hong Kong" ("the Guide") is based on these.

² "(3) The bill shall be given a long title setting out the purposes of the bill in general terms."

Ordinance, particularly if the purpose is not expressly referred to elsewhere.

Extra significance in amending Bills

5. Even for a person with training and experience in reading legislation, it can be a challenging task to understand the purpose of an amending instrument (with textual amendments) on a general reading of the individual provisions. The amending legislation may have a common theme, but the amendments may not occur in sequence. If the amendments are unconnected, the difficulty will be enhanced. In this scenario a long title that gives a short description of individual provisions would be an invaluable aid to a reader and will give an immediate picture of the purposes of the legislation. This being so, unsurprisingly, the long titles of amending Bills generally tend to be more detailed and descriptive than long titles of new principal Bills.

6. Informative long titles are more common now than a long title that simply states “A Bill to amend the XYZ Ordinance”.³ As noted above, this trend reflects a more user-friendly approach to the drafting of legislation and to give effect to Rule 50(3). In a new Bill, a long title that says “A Bill to establish ABC corporation.” would not be helpful to a reader who wishes to understand the general purpose of the legislation without reading laboriously through the legislation. Similarly, a long title that says “A Bill to amend the XYZ Ordinance” would not be useful from a reader’s view point. A brief description of each significant clause is an effective way of giving an overview of the purpose and subject matter of a Bill.

Other common law jurisdictions

7. The conventions on long titles in most other common law jurisdictions also appear to be expressed in general terms. A common feature is that the long title must encompass the contents of the Bill. The connecting factor would be legislative practices and procedures rooted in parliamentary traditions of the United Kingdom.

8. The “Guide to Making Legislation” issued by the Cabinet Office of the United Kingdom says that the long title “must cover all the provisions of the Bill”. The “House of Commons Practice and Procedure” of the Parliament of Canada states that the long title “must accurately reflect its [the Bill’s]

³ This has been noted in paragraph 14.4.3 of the Guide.

contents”. The Guide to Procedures of the House of Representatives of the Commonwealth of Australia requires that “every clause must come within scope of the title”.⁴

Long titles of Bills implementing international conventions

9. At the meeting held on 15 December 2009, the AJLS Panel also raised the question of long titles of Bills that implement international conventions. There are no special guidelines for drafting the long titles of these Bills and the approach is in line with that for long titles of other Bills. The method of implementation and the extent of implementation of the convention concerned will be considered in drafting the long title.

Law Drafting Division
Department of Justice
June 2012

⁴ Drafting direction No. 1.1 of the Office or Parliamentary Counsel says that “The title of a Bill must encompass all the matters included in the Bill.”