

# 立法會 *Legislative Council*

LC Paper No. CB(2)512/09-10(05)

Ref : CB2/PL/AJLS

## **Panel on Administration of Justice and Legal Services**

### **Background brief prepared by the Legislative Council Secretariat for the meeting on 15 December 2009**

#### **Drafting of legislation**

#### **Purpose**

This paper gives an account of the past discussions of Members of the Legislative Council (LegCo) on issues relating to drafting of legislation since the First LegCo.

#### **Background**

##### Bilingual legislation

2. Up until the late 1980s, all legislation in Hong Kong were drafted and enacted in English only. In March 1987, the Official Languages Ordinance (Cap. 5) was amended to require all new legislation to be enacted in both English and Chinese. As regards ordinances enacted in English only, Chinese texts were prepared under the Law Translation Programme. The Chinese texts were declared authentic by the Governor-in-Council after consulting the Bilingual Laws Advisory Committee. The Law Translation Programme was completed in May 1997. Consequently, all laws are now available in both English and Chinese.

3. Section 10B(1) of the Interpretation and General Clauses Ordinance (Cap. 1) provides that both the English text and the Chinese text of an ordinance are equally authentic and that the provisions of an ordinance are presumed to have the same meaning in each authentic text.

##### The Law Drafting Division (LDD)

4. LDD of the Department of Justice (DoJ) is responsible for drafting all legislation proposed by the Administration. It also vets all non-Government Bills and subsidiary legislation put forward by non-Government bodies to make sure that they comply with current drafting practice on format and style. The Division is also responsible for ensuring that the published version of Hong Kong's legislation is up to date. Law draftsmen in LDD are of the Government Counsel (GC) grade.

## **Issues raised by Members during past discussions**

5. Issues relating to law drafting were discussed at a number of special meetings of the Finance Committee to examine the Estimates of Expenditure and meetings of the Panel on Administration of Justice and Legal Services (the Panel). The subject was last discussed by the Panel at its meeting on 28 April 2008. The major issues raised by Members are summarized in the ensuing paragraphs.

### Drafting policy

6. The drafting policy on bilingual legislation was discussed at the Panel meeting on 20 March 2001. The discussion was prompted by the concern expressed by the relevant Bills Committee during the scrutiny of the Securities and Future Bill introduced into LegCo in November 2000. The Bills Committee was concerned that the differences in the drafting and style between the English and Chinese texts of the Bill would lead to different interpretation of the two texts of the Bill. The Administration explained that it was the policy of LDD to draft legislation that could reflect accurately the policy intent and were concise and easy to comprehend. With all legislation being drafted and enacted bilingually, the objective was for there to be no discrepancy in meaning between the Chinese and English texts. While every effort was made to match the two texts, an exact match was not always practicable having regard to the syntactic and grammatical differences between the two languages.

### Quality of law drafting

7. Concerns about the quality of law drafting were raised at a number of Panel and special Finance Committee meetings. In February 2009, the issue was referred to the Panel by the Subcommittee to Examine the Implementation in Hong Kong of Resolutions of the United Nations Security Council in relation to Sanctions under the House Committee. The Subcommittee considered that LDD should carry out drafting and textual improvement to all existing legislation and that guidelines should be provided to uphold the quality and standard of law drafting.

8. In addressing the concern about the readability of the Chinese texts of legislation, the Administration advised that LDD would continue to enhance the Chinese law drafting skills of law draftsmen through its in-house mentorship scheme and training programmes. As a long English text would add complexity to the Chinese rendition, LDD would also strive to make the drafting of the English text as plain as possible to assist the drafting of the Chinese text. Members were also informed that one of the practical difficulties faced by law draftsmen in preparing the Chinese texts was shortage of time. By convention, the initial text was produced in English and by the time the English text was finalized, there was limited time left for the preparation of the Chinese text.

9. Regarding members' view on the need to cut down cross references and avoid artificial and complicated definitions in legislation to enhance the comprehensibility of legislation, the Panel was advised that LDD was committed to drafting law in plain language and would remove unnecessary cross references as far as possible. Nonetheless, in complex areas of law, law draftsmen might find it necessary to use tools such as explanatory notes to help readers understand the context of the legislation and pick up the meaning of the provisions more readily.

10. In response to the question raised by Dr Hon Margaret NG at the special meeting of the Finance Committee to examine the Estimates of Expenditure for 2009-2010 held on 23 March 2009, the Administration informed Members that the Drafting Techniques and Legislative Style Committee set up in LDD was reviewing a range of drafting techniques and legislative style in general, such as the amending technique applied in bills, with a view to improving the comprehensibility of Hong Kong legislation in both the English and Chinese texts. Members also noted that additional resources would be deployed in 2009-2010 for the recruitment of a contract Legislative Editor and a temporary counsel. An expert in the English language would be recruited to fill the Legislative Editor position to review the use of grammar and syntax in law drafting and make suggestions for improving the language flow in legislation, while the temporary counsel would be responsible for reviewing and updating the law drafting manual, improving the readability of the statutes of Hong Kong and enhancing knowledge management within LDD.

#### Mentorship Scheme and training programmes

11. On measures to enhance the drafting skills of law draftsmen, the Administration informed the Panel that a Mentorship Scheme was in place to enable junior officers to develop their skills through learning from the more experienced law drafters. The Scheme started as a trial scheme in November 2001 and was made permanent in September 2005. Under the Scheme, each counsel (mentee) in the Senior GC or GC rank was assigned a mentor at the directorate rank. Apart from serving as a quality control mechanism under which the drafting of the mentees was vetted by the mentors, the arrangement also allowed junior drafters to gain exposure to more complicated work at an early stage of their career and enabled them to acquire knowledge more efficiently from experienced colleagues. The Scheme was kept under review to determine whether any change was desirable to enhance its effectiveness as a learning and development tool. In addition, LDD would continue to organize an intensive and comprehensive in-house legislative drafting course and in-house seminars for all law-drafting counsel. Subject to operational requirements, arrangements would also be made for law-drafting counsel to participate in international drafting conferences to broaden their exposure.

12. In response to a written question raised by Hon Cyd HO during the examination of Estimates of Expenditure for 2009-2010 in March 2009, the Administration advised that the following in-house seminars and workshops had been organized in the past few years -

- (a) two seminars on drafting Chinese legal provisions and preparing legal reports were held in July and August 2007;
- (b) a seminar on modern trends in law drafting was organized in May 2008;
- (c) a Legislative Drafting Course was organized from May to December 2008;
- (d) a seminar on gender-neutral drafting was organized in June 2008; and
- (e) a seminar on saving and transitional provisions was organized in February 2009.

DoJ had also nominated 25 counsel to attend the Commonwealth Association of Legislative Counsel Conference 2009 held in Hong Kong in April 2009.

Policy on the Chinese language proficiency requirement in the recruitment of law drafters

---

13. Policy relating to the recruitment of law draftsmen was discussed at the Panel meetings in April 2006 and June 2007. The Panel expressed concern that the Chinese language proficiency requirement for appointment to the rank of GC would limit the choice of candidates in the recruitment process and preclude the appointment of monolingual draftsmen with experience and expertise in drafting legislation in English, and requested the Administration to review its recruitment policy for law draftsmen.

14. The Administration explained to the Panel that in line with the Government's objective to develop and maintain a biliterate civil service that was able to operate efficiently in both Chinese and English, Chinese language proficiency had been adopted as a general entry requirement for recruitment to the GC grade since 1998. As the work of LDD required bilingual legislative drafting, proficiency of draftsmen in both languages would facilitate the deployment of manpower resources in the division. Nevertheless, the Administration recognized the operational needs of LDD to recruit from time to time monolingual counsel to fill particular vacancies, and flexibility was allowed in granting exemptions from the general language proficiency requirement where justified. For instance, in the light of recruitment difficulties, DoJ had sought the agreement of the Civil Service Bureau in the 2007 GC recruitment exercise to exempt a small number of new recruits from the Chinese language proficiency requirement. This would ensure that exceptionally meritorious monolingual counsel would not be precluded from being appointed as GC. Furthermore, in relation to recruitment to the directorate GC posts, the Chinese language proficiency requirement might be waived where there was a need to do so. There had been occasions when such requirement was waived.

### Legislation to give effect to international conventions

15. The Genetically Modified Organisms (Control of Release) Bill was introduced into LegCo in May 2009 to give effect to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity in Hong Kong. The Bills Committee concerned noted that while such objective was clearly spelt out in the long title of the Bill, it might not be the case for other legislation of similar nature. The Bills Committee considered that there was a need for consistency in making reference to international conventions in the long title of bills if such bills are to give effect to relevant convention(s). The matter was referred to the Panel for follow up in November 2009.

### **Latest development**

16. When the Panel was briefed on the Chief Executive's Policy Address 2009-2010 at the meeting on 22 October 2009, members noted from the Administration that one of DoJ's new initiatives was to enhance the accessibility of legislation through improved design and greater clarity. To this end, LDD would make changes to the format and visual design of legislation to render it more user-friendly.

17. The Panel has invited the Law Draftsman to update the Panel on the work and future initiatives of LDD at the forthcoming meeting on 15 December 2009.

### **Relevant papers**

18. A list of relevant papers available on the LegCo website (<http://www.legco.gov.hk>) is in the **Appendix**.

## Drafting of legislation

## Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Finance Committee (Special meeting)	24 March 2000	<a href="#">Minutes of meeting</a>
Legislative Council	5 April 2000	<a href="#">Official Record of Proceedings of the Council on a written question raised by Hon Eric LI on "Provision of professional input when drafting bills on regulation of financial market"</a>
Panel on Administration of Justice and Legal Services	20 February 2001	Minutes of meeting <a href="#">[LC Paper No. CB(2)1310/00-01]</a>
	20 March 2001	Paper prepared by the Legal Service Division on "Drafting of Bilingual Bills" <a href="#">[LC Paper No. LS74/00-01]</a>  Administration's paper on "Drafting policy on bilingual legislation" <a href="#">[LC Paper No. CB(2)1085/00-01(02)]</a>  Minutes of meeting <a href="#">[LC Paper No. CB(2)1516/00-01]</a>
Finance Committee (Special meeting)	22 March 2001	<a href="#">Minutes of meeting</a>
	30 March 2004	<a href="#">Minutes of meeting</a>
Panel on Administration of Justice and Legal Services	24 January 2005	Administration's written response on "Drafting Counsel in the Department of Justice" <a href="#">[LC Paper No. CB(2)315/04-05(01)]</a>
		Administration's written response on "Manpower position of drafting counsel in the Department of Justice" <a href="#">[LC Paper No. CB(2)835/04-05(01)]</a>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
		Minutes of meeting [LC Paper No. CB(2)946/04-05]
	17 October 2005	Minutes of meeting [LC Paper No. CB(2)677/05-06]
Finance Committee (Special meeting)	16 March 2006	Minutes of meeting
Panel on Administration of Justice and Legal Services	24 April 2006	Administration's paper on "Mentorship Scheme in the Law Drafting Division, Department of Justice" [LC Paper No. CB(2)1755/05-06(03)]  Administration's paper on "Training attachments to overseas jurisdictions" [LC Paper No. CB(2)1755/05-06(04)]  Chairman's letter to the Secretary for Justice and the latter's reply on "Language proficiency requirements for appointment as legislative draftsmen" [LC Paper Nos. CB(2)1937/05-06(01) and (02)]  Minutes of meeting [LC Paper No. CB(2)2494/05-06]
Finance Committee (Special meeting)	22 March 2007	Minutes of meeting
Panel on Administration of Justice and Legal Services	25 June 2007	Administration's paper on "Policy relating to recruitment of law draftsmen" [LC Paper No. CB(2)2221/06-07(07)]  Minutes of meeting [LC Paper No. CB(2)2654/06-07]
Finance Committee (Special meeting)	1 April 2008	Minutes of meeting

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper/Question</u>
Panel on Administration of Justice and Legal Services	28 April 2008	Administration's paper on "The Law Drafting Division of the Department of Justice" [LC Paper No. CB(2)1699/07-08(07)]  Background Brief on "Issues of concern raised by Members relating to the Law Drafting Division" prepared by the Legislative Council Secretariat [LC Paper No. CB(2)1699/07-08(06)]  Minutes of meeting [LC Paper No. CB(2)2325/07-08]
Finance Committee (Special meeting)	23 March 2009	<a href="#">Minutes of meeting</a>

Council Business Division 2  
Legislative Council Secretariat  
9 December 2009