

Bills Committee on Legislation Publication Bill (the “Bill”)

Response to concerns raised by members on the Bill

At the meeting on 22 November 2010, the Bills Committee asked the Administration to respond in writing to concerns raised by members on the Bill.

Status of legislation (concern (a))

2. When a Bill is passed by the Legislative Council (the “LegCo”), all the Committee Stage Amendments (“CSAs”) will be incorporated into the Bill with necessary renumbering and formatting changes. Article 48(3) of the Basic Law, if read together with article 76, requires that a Bill passed by the LegCo has to be signed and promulgated by the Chief Executive (“CE”) before they may take effect. After a Bill has been so enacted as an Ordinance, it shall be published in the Gazette as required under section 20(1) of the Interpretation and General Clauses Ordinance (Cap.1). Section 98(1) states that “a copy of an Ordinance shall, if published in the Gazette, be deemed to be an authentic copy of that Ordinance as at the date of such publication”.

3. Given section 98(1) of Cap.1, the version published in the Gazette is the authentic version if it is an accurate representation of the Bill signed by the CE and an accurate representation of the original Bill as amended by the CSAs passed by the LegCo in accordance with the provisions of the Basic Law and the LegCo rules of procedure, with allowances for such adaptations as are necessary for transforming the Bill into an Ordinance. Both the version published in the Gazette and the version signed by the Chief Executive would be equally authentic if they accurately represent the original Bill as amended by the CSAs passed by the LegCo.

4. The status of an online copy of an Ordinance in the Database will be provided for under Clause 5(2) of the Bill. A copy of an Ordinance published in the Database and certified by the Law Draftsman to have incorporated all permitted amendments, is presumed to correctly state the Ordinance unless the contrary is proved. This “presumed to be correct” status is comparable to that provided for copies of Ordinances currently included in the Loose-leaf Edition of the Laws of Hong Kong. If there is any doubt on the accuracy of the copy, the user could check against the

Gazette version, which is deemed to be an authentic copy of that Ordinance as described in paragraph 3.

Safeguard measures (concerns (b), (c) and (d))

5. In anticipation of the new legislation template and the development of the Database, we have conducted a careful review of our work process last year to ensure the accuracy of copies of Ordinances to be published in the Database. We also implemented a new legislation drafting template in July 2010 to standardize the format and layout of legislation. We have also streamlined the data conversion process to facilitate import of data from the gazetted version of an Ordinance into the Database. Stringent checking mechanisms involving multiple rounds of checking by different teams are adopted to check and verify the data against the hardcopy legislation.

6. Although we are not aware of any hacking activity against legislation databases in other jurisdictions so far, we will take stringent measures to safeguard the Database's integrity. To ensure that the security measures for the Database will comply with the standards adopted by the Government, independent consultants will be engaged to conduct security risk assessment and audit before the full roll-out of each phase, as well as periodically after the Database is launched. We will develop on-line and constant monitor of activities of the Database, and if any unauthorised tampering with the contents in the Database is spotted, any unauthorised change will be corrected, an impact analysis and assessment performed, and an announcement made where appropriate.

7. We wish to point out that any unauthorised amendment made to the copies of Ordinances published in the Database, whether with malicious intent or not, does not have any legal effect and does not change the text of the Ordinances. Our system will enable users to have quick and convenient means to trace the history of amendments to an Ordinance and parties will be able to conveniently ascertain whether and what changes have been made to a copy of an Ordinance at any given time.

LegCo's powers to amend the revisions orders (concerns (e) and (f))

8. Clause 12 of the Bill covers minor editorial amendments only. Clause 13 expressly states that the editorial powers will be subject to the overriding principle that any editorial amendment cannot change the legal effect of any legislation. We will not propose to exercise the powers under Clause 12 if we foresee a possibility of dispute. If there is a dispute,

the interpretation that carries a different legal effect cannot stand. The Bill also provides that all editorial amendments must be properly recorded before they take effect.

9. The type of amendments envisaged under Clause 17 are not intended to be substantive. All revision orders made by the Secretary for Justice under Clause 17 are subject to negative vetting. If LegCo disagrees with the revisions, it could amend the revision orders in the manner set out in section 34 of the Interpretation and General Clauses Ordinance (Cap.1). Clause 18 of the Bill is an additional safeguard which provides that a revision order is not to come into operation before the expiry of the negative vetting period.

10. Given the minor and technical nature of the editorial amendments made under Clause 12 and the revisions made under Clause 17, we are of the view that they do not justify the positive vetting procedure that requires LegCo's active time and efforts to scrutinize them. Timely revision to legislation will also definitely improve its readability and thus will benefit the society as a whole.

Records of editorial amendments and revisions (concern (g))

11. To ensure that members of the public will have convenient access to the amendments made under Clause 12, a record of editorial amendments will be compiled and made available for inspection on the approved website (Clauses 4 and 15 of the Bill). Further, under clause 16, an editorial amendment will not have effect unless information relating to it is entered in the record.

12. As for those revisions made under Clause 17, they will be conveniently located with reference to the L.N. numbers of the amending instruments.

13. In addition, the Database will be designed in a way that the public will be able to track both editorial and legislative changes to legislation conveniently. An e-mail alert function will also be developed in the Database to alert users of updates of selected legislation.

Back capture of historical versions before 1 July 1997 (concern (h))

14. We have briefed the Bills Committee on the timetable for the implementation of the Database in the first meeting. From mid 2010 to 2015, full attention will be paid to the procurement exercise and the

development of the Database. The Database containing modernized presentation of legislation is expected to commence operation from 2015/16 on completion of internal testing and evaluation. During the period from 2015 to 2020, we will concentrate on authenticating the current version of the whole set of Hong Kong legislation so that the public will be able to have access to the current consolidated Hong Kong legislation having an official status in the Database. We will also migrate the historical versions stored in BLIS from 1 July 1997 onwards to the Database to facilitate searching of past versions of legislation dating back to that date.

15. The back capture of historical versions of any statutory provision which had been repealed or amended before 1 July 1997 involves immense human resources. Although we would also like to provide historical versions running into earlier dates, we have to prioritise the objectives and we are not able to include it in the current Database project. Back capturing will be a separate project which will require careful planning and a feasibility study. With the current limited resources, we are unable to take that on before the entire Loose-leaf edition has been migrated to the Database (which is unlikely to be earlier than 2019/20).

Enhancement to BLIS (concern (i))

16. We do make enhancements to BLIS from time to time, taking into account the comments and suggestions we have received from the public, including the legal profession. For example, the printing function for Individual Section Mode in BLIS has been enhanced to allow users to save and print selected provisions in same or different chapters to a single HTML-format document. To facilitate easier access to past versions of a provision, a new button “Past Versions” was added in the “Current Version” view of provisions under the Individual Section Mode. PDF version of the complete text of individual items of legislation, showing the correct format of the legislation, is also available under the Whole Enactment Mode.

17. Given the growing use of mobile devices to get access to legislation, we have started a “Mobile BLIS project” which aims at providing user-friendly display of BLIS on mobile devices through the Internet. When BLIS on Internet website detects access by a recognizable browser on a mobile device, it will direct the user to the Individual Section Mode page with a display designed to fit the size of the screen of the mobile device. We expect to offer this service by the end of 2011.

18. However, the technical set-up of BLIS imposes constraints on enhancements that could be made to the system. The new Database will be able to get around the technical constraints and utilize modern technology to provide users with better display and searching functions.

Database to replace the Loose-leaf system gradually (concerns (j) and (k))

19. We would like to make it clear that the Government has no intention to stop publishing a print version of consolidated legislation. In addition to the print-out function of the Database for users to download and print their own copies of legislation, we intend to continue to make available official hard copies of individual Ordinances in whole chapter reprint form for sale to the public. Clause 9 of the Bill is drafted in contemplation of publication of Ordinances in form of booklets.

20. . The main advantages of the new arrangement are summarized as follows—

- (a) **Cost savings**
The costs of acquiring the whole set of Loose-leaf edition and Loose-leaf replacement issues will be saved.
- (b) **Flexibility**
For legislation users who do not need a complete set of all Ordinances, they can choose to print or buy the current version of an Ordinance or the version as of a particular date only. This flexibility is not available in the current loose-leaf subscription system. At present, loose-leaf replacement pages are available in bulk form covering all chapters of Ordinances, and subscribers have to go through all replacement pages to keep copies of all Ordinances up-to-date.
- (c) **Timely and regular updating**
The new database system will provide more up-to-date legislation data. This will facilitate more timely and regular updating by legislation users of their own copies. Instead of the current half-yearly issue of Loose-leaf replacement pages, the free e-mail alert function will inform subscribers of amendments to legislation on-line.

(d) **Easy updating**

The new database system will provide a feature for users to check whether a particular Ordinance has been amended during a specified period. This will make their updating work much easier.

21. With the availability of the hardcopy legislation either in print-out form downloaded by users themselves or in booklet form purchased from the Government, it will be unnecessary to keep the Loose-leaf Edition on full implementation of the Database. In addition to having a single source of legislation data and therefore reducing chance of errors, efforts currently required in compiling both the Loose-leaf edition and BLIS can be combined to produce higher quality output of Hong Kong legislation from the Database.

Publication of Gazette (concern (l))

22. We do not have plans at present to publish Gazette with a legal status in the Database. The Gazette will continue to be published by the Government Logistics Department separately.

Third Reading of Bill in LegCo (concern (m))

23. We do not expect that the implementation of the Database will affect the current practice in LegCo.

Experience from overseas jurisdiction (concern (n))

24. We have studied the implementation experience in some overseas jurisdictions, including New Zealand and various states in Australia. There are certain areas in which we must pay attention to for such a large and long-running project.¹ Firstly, legislation publication is a specialized domain. It has very stringent requirements on formatting and accuracy, and we have to give clear and detailed users specifications to the contractor to develop the Database. Briefing should be provided to the contractor for their staff to understand the practice. We also need to have good internal and external communication and negotiation strategies. To build a seamless interface between the legislation and technical aspects, it is also important to have a team of dedicated people from both the IT field and the drafting field to work closely together to contribute, monitor

¹ More information could be found in the “Post Implementation Review on Public Access to Legislation (PAL) Project” published by the Parliamentary Counsel Office of New Zealand.

the building up of the system, plan and carry out user testing and perform acceptance.

25. Given the huge volume of data involved and the diversity of the data (whether in terms of history, format and other aspects), the transition from the existing system to the new system will require careful planning and management. A phased approach will help to mitigate the risks. Contingency and fall-back plans have to be developed in case unexpected problems are identified during the transition to the new system.

26. We have formed a dedicated team in the Department of Justice to be responsible for the Database project. We will draw on the experience of our counterparts in overseas jurisdictions along the way of development and implementation of the Database. This project, however, is unique in one aspect, the processing of Chinese text, and we will not underestimate the complexity brought by the dual language requirement.

Sharing of legislation within the Government

27. All government bureaux and departments will be able to continue to get access to the most updated legislation on implementation of the Database. The existing backup and supporting arrangement are also considered efficient. The major law enforcement agencies do welcome and support our initiatives to provide the government and the public with updated legislation having an official status online.

Department of Justice
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