

LEGISLATIVE COUNCIL BRIEF

LEGISLATION PUBLICATION BILL

INTRODUCTION

A At the meeting of the Executive Council on 5 October 2010, the Council ADVISED and the Chief Executive ORDERED that the Legislation Publication Bill, at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

2. Details and justifications regarding the legislative proposal are set out in paragraphs 3 to 10 below.

(A) Laws Compilation

Gazettal of legislation

3. The law requires Hong Kong legislation to be published in the Gazette (section 20 of the Interpretation and General Clauses Ordinance), and a copy so published is deemed to be authentic [section 98(1) of the Interpretation and General Clauses Ordinance].

Loose-leaf Edition

4. The Department of Justice (DoJ) also arranges for the publication of a consolidated edition of the laws, which now comprises 48 volumes of 40 576 replaceable pages (the Loose-leaf Edition). Periodic issues of new or replacement pages incorporating new legislation or amendments to the texts are sent to subscribers, who

need to substitute them for outdated pages. The Loose-leaf Edition is deemed to be correct unless the contrary is proved (section 3 of the Laws (Loose-leaf Publication) Ordinance 1990).¹

Revised Edition

5. On the introduction of the Loose-leaf Edition, the previous consolidated edition (the Revised Edition) was discontinued in 1989. The legal status of the Revised Edition is different from the Loose-leaf Edition; it “shall be deemed to be and shall be without any question whatsoever in all courts of justice and for all purposes whatsoever the sole and only proper laws of Hong Kong in respect of all Ordinances contained therein” [section 11(2) of the Revised Edition of the Laws Ordinance 1965].

Bilingual Laws Information System

6. DoJ also maintains an on-line legislation and related materials database, known as the Bilingual Laws Information System (BLIS), which is available free to the public on the internet at www.legislation.gov.hk. The database contains a consolidated version of legislation but is for reference only and does not have any legal status.

(B) Public Access to the Legislation

Limitations to the Loose-leaf Edition and BLIS

7. The Loose-leaf Edition is the official source of consolidated and current Hong Kong legislation published under statutory authority. At present, changes to legislation are consolidated and printed as the Loose-leaf Edition twice a year (in June and November). There is, therefore, always a lag time (which may be up to a few months) between the passage of the relevant legislative provisions and their incorporation

Note ⁽¹⁾ As of August 2010, it comprises 48 volumes, containing over 680 Ordinances and 1,395 items of subsidiary legislation.

in the Loose-leaf Edition. BLIS is updated more frequently to provide the public with the most up-to-date consolidated Hong Kong legislation.² However, it does not enjoy any status recognized by law and can only be for reference purpose.

Need for an official electronic database with a legal status

8. Access to the law is a fundamental element of a jurisdiction that upholds the rule of law. In the modern information technology age, the availability of an updated, reliable and searchable online consolidated legislation database with a legal status is a must.

(C) Modernization of Presentation for User-friendliness

9. Other leading jurisdictions have been improving the presentation of their legislation. In order to keep abreast with the current trend, the existing format and styles of our legislation are in need of modernization and adjustments to improve the legislation's presentation and user-friendliness.

(D) Editorial Powers

10. While we are able to introduce new format and styles in newly gazetted legislation, we have insufficient power to update existing legislation to the new format and styles. This may present difficulties when incorporating amendments in new format and styles into the texts of existing legislation. In order to ensure uniformity in appearance across the whole consolidated text as published, currently in the Loose-leaf Edition and in future in the database, it will be necessary to provide for new editorial powers to bring the consolidated text into line with the current drafting styles of new legislation. We also seek to consolidate existing provisions for making minor and technical

Note ⁽²⁾ New legislation and amendments to existing legislation are usually incorporated into BLIS within three to four weeks after the new legislation and amendments come into operation.

amendments to legislation which are currently scattered in various Ordinances, add certain new editorial powers, and to streamline the procedures for doing so.

THE LEGISLATION PUBLICATION BILL (THE BILL)

Database of Hong Kong Legislation

11. **Clause 3** provides for the establishment of an electronic database of Hong Kong legislation and the approval of a website on which information in the database may be published. **Clause 4** provides for the contents of the database, and **clauses 5 to 8** contain provisions on the status of the contents. **Clause 9** provides for the publication of booklets of Ordinances, and **clause 10** contains evidential provisions.

Editorial Amendments and Records

12. **Clauses 11 to 16** provide for the powers of the Secretary for Justice (SJ) to make editorial amendments to Ordinances but these editorial amendments must not change the effect of any Ordinance. These editorial amendments have effect as if they had been made by another Ordinance, and editorial amendments would not have effect unless they are described in a record compiled by the Secretary for Justice, which will be contained in the database.

Powers to Make Revisions

13. **Clause 17** provides for law revision powers of SJ. The powers are relatively more substantial, and will be made by order in the Gazette as provided for by **clause 18**.

Additional Editorial Powers for the Loose-leaf Edition and Retirement of Loose-leaf Edition

14. **Clause 20** confers powers on SJ to make in the Loose-leaf Edition editorial changes to the format, layout, printing style or any other presentational aspect of any Ordinance. **Clause 21** provides for the gradual migration of authenticated Ordinances from the Loose-leaf

Edition to the new electronic database. **Clause 26** seeks to repeal the Laws (Loose-leaf Publication) Ordinance 1990. We intend to bring that provision into operation on a later day after all Ordinances have migrated to the new electronic database.

Consequential Amendments

15. Other provisions in **clauses 22 to 34** contain consequential and related amendments to the Laws (Loose-leaf Publication) Ordinance 1990, the Revised Edition of the Laws Ordinance 1965, the Interpretation and General Clauses Ordinance, the Official Languages Ordinance and the Criminal Procedure Ordinance.

LEGISLATIVE TIMETABLE

16. The legislative timetable will be as follows –

Publication in the Gazette	8 October 2010
First Reading and commencement of Second Reading debate	20 October 2010
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

17. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It has no productivity, environmental or sustainability implications.

18. The Bill does not contain any express binding effect provision.

19. The proposal has economic and financial and civil service implications as set out in Annex B.

PUBLIC CONSULTATION

20. We briefed the Legislative Council Panel on Administration of Justice and Legal Services on the modernized format and styles of legislation in December 2009 and obtained their support on the proposed electronic database of Hong Kong legislation in April 2010. Representatives of the Law Society and the Bar Association have also been given a general briefing in late 2009 on the proposed new format and styles for legislation and the proposal related to access to legislation and the database. In July 2010, we informed the Law Society and the Bar Association of this legislative proposal. Briefing sessions were held for the Bar Association and the Law Society representatives in August 2010.

PUBLICITY

21. A press release is to be issued on 7 October 2010. A spokesperson will be available to answer enquiries.

ENQUIRY

22. Any enquiry on this brief can be addressed to Mr. W.C. Suen, Senior Assistant Law Draftsman (Professional Development), Law Drafting Division, Department of Justice, at Tel. No. 2867 4171.

Department of Justice

6 October 2010

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Legislation Publication Bill

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A BILL

To

Provide for the establishment of an electronic database of legislation and approval of a website on which the information in the database may be published and accessed; to give legal status to copies of the legislation published on an approved website; to provide for powers to make editorial amendments and revisions to Ordinances; to provide for additional editorial powers for preparation of the loose-leaf edition of the Laws of Hong Kong; to provide for related matters; and to make consequential amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Legislation Publication Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

2. Interpretation

In this Ordinance—

approved website (認可網站) means a website approved under section 3(b);

as made Ordinance (原版條例) means an Ordinance as originally enacted or made;

authenticated copy (經認證文本)—see section 5(1);

consolidated version (編訂版本) means a version of an Ordinance that has incorporated all permitted amendments in force as at a particular time on a particular date;

database (資料庫) means the electronic database of the legislation applying in Hong Kong established under section 3(a);

editorial amendment (編輯修訂) means an amendment to an Ordinance made under section 12(1) or (2);

permitted amendment (許可修訂), in relation to an Ordinance, means—

- (a) an amendment to the Ordinance made by another Ordinance;
- (b) an editorial amendment to the Ordinance; or
- (c) an amendment to the Ordinance made under section 2(2)(b), (d) or (e) of the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990).

Part 2

Database of Legislation

3. Establishment of database

The Secretary for Justice may—

- (a) establish and maintain an electronic database of the legislation applying in Hong Kong; and
- (b) approve a website on which the information in the database may be published and accessed.

4. Contents of database

- (1) The database is to contain—
 - (a) consolidated versions of Ordinances that have been given chapter numbers under section 11(a);
 - (b) national laws applying in Hong Kong; and
 - (c) the record of editorial amendments compiled under section 15.
- (2) The database may also contain—
 - (a) bills to be introduced or introduced into the Legislative Council;
 - (b) as made Ordinances; and
 - (c) other legislation, materials and information that the Secretary for Justice considers useful to users of an approved website.

5. Status of authenticated copies of Ordinances

- (1) A copy of an Ordinance is an authenticated copy of the Ordinance as at a particular time on a particular date if the copy is—
 - (a) published on an approved website; and

- (b) certified by the Law Draftsman to be the consolidated version of the Ordinance as at that time on that date.
- (2) An authenticated copy of an Ordinance as at a particular time on a particular date is presumed, unless the contrary is proved, to correctly state the Ordinance as at that time on that date.

6. Status of copies of national laws published on approved website

A copy of a national law applying in Hong Kong, as published on an approved website, is presumed, unless the contrary is proved, to correctly state the national law.

7. Status of copies of as made Ordinances published on approved website

A copy of an as made Ordinance, as published on an approved website, is presumed, unless the contrary is proved, to correctly state the Ordinance.

8. Status of copies of other legislation published on approved website

A copy of an item of legislation referred to in section 4(2)(c), as published on an approved website, is presumed, unless the contrary is proved, to correctly state the item of legislation.

9. Publication of booklets of Ordinances

- (1) The Secretary for Justice may cause an authenticated copy of any Ordinance to be published in the form of a booklet.
- (2) If a booklet of an authenticated copy of an Ordinance as at a particular time on a particular date published under subsection (1) contains the information and statement specified in subsection (3), the booklet is presumed, unless the contrary is proved, to correctly state the Ordinance as at that time on that date.
- (3) The information and statement are—
 - (a) the particular time and date; and

- (b) a statement that the booklet is published under this section.

10. Evidential provisions

- (1) A website purporting to be an approved website is presumed, unless the contrary is proved, to be an approved website.
- (2) A document purporting to be an authenticated copy of an Ordinance as at a particular time on a particular date is presumed, unless the contrary is proved, to be an authenticated copy of the Ordinance as at that time on that date.
- (3) A document purporting to be a copy of a national law applying in Hong Kong published on an approved website is presumed, unless the contrary is proved, to be a copy of the national law so published.
- (4) A document purporting to be a copy of an as made Ordinance published on an approved website is presumed, unless the contrary is proved, to be a copy of the Ordinance so published.
- (5) A document purporting to be a copy of an item of legislation referred to in section 4(2)(c) published on an approved website is presumed, unless the contrary is proved, to be a copy of the item of legislation so published.
- (6) A document purporting—
 - (a) to be a booklet of a copy of an Ordinance published under section 9(1); and

- (b) to contain the information and statement specified in section 9(3),
is presumed, unless the contrary is proved, to be a booklet of an authenticated copy of the Ordinance so published.
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Part 3

Editorial Amendments and Record

Division 1

Editorial Powers

11. Powers to give chapter numbers etc.

The Secretary for Justice may—

- (a) give a chapter number to an Ordinance; and
- (b) in the database, arrange the grouping and sequence of Ordinances, national laws applying in Hong Kong, and other legislation contained in it.

12. Powers to make editorial amendments

(1) The Secretary for Justice may, in an Ordinance—

- (a) correct a grammatical, clerical or typographical error, or an error of a similar nature;
- (b) replace a reference to a date in the form of a description by the actual calendar date;
- (c) if it is necessary or expedient to do so, renumber provisions;
- (d) change the way of referring to or expressing a number, year, date, time, amount of money, penalty, quantity, measurement or provision;
- (e) alter the text of a provision to give effect to another provision under which the provision is deemed to be amended in a manner as specified in that other provision;

- (f) replace a word or expression indicating gender or that could be taken to indicate gender to a gender-neutral word or expression;
 - (g) omit—
 - (i) the enacting provision; and
 - (ii) any word, expression or provision that has expired, the operation of which is exhausted or spent or that is otherwise obsolete or redundant;
 - (h) amend the heading of a provision or a group of provisions to reflect the contents of the provision or the group of provisions;
 - (i) change the sequence of definitions, or of items in a list or schedule;
 - (j) change the format, layout, printing style or any other presentational aspect; or
 - (k) make an amendment that is consequential on any amendment made under this section (other than this paragraph).
- (2) The Secretary for Justice may, in any item of subsidiary legislation, replace a general reference to another item of subsidiary legislation by—
- (a) the title or citation of that other item of subsidiary legislation;
 - (b) its number among the subsidiary legislation of the year in which it was made; or
 - (c) the chapter number given to it under section 11(a).

13. Editorial amendments not to change legal effect of Ordinances

Section 12 does not permit any editorial amendment that would change the legal effect of any Ordinance.

14. Effect of editorial amendments

- (1) An Ordinance that is amended under section 12 has effect for all purposes, on and after the publication date, as if the amendment had been made by another Ordinance that commenced on the publication date.
- (2) A copy of the amended Ordinance, as published on an approved website, must indicate in a suitable place the fact that it has been amended under section 12.
- (3) In this section—
publication date (發布日期), in relation to an Ordinance amended under section 12, means the date on which a consolidated version of the Ordinance that has incorporated the amendment is first published on an approved website.

Division 2**Record of Editorial Amendments****15. Secretary for Justice to compile record of editorial amendments**

- (1) The Secretary for Justice must compile a record containing—
 - (a) descriptions of editorial amendments made;
 - (b) the time and date on which each description of editorial amendments is entered in the record; and
 - (c) other information that the Secretary for Justice considers useful to users of the record.
- (2) The record is to be kept in a form that the Secretary for Justice considers appropriate.

16. Editorial amendments without effect if not contained in record

An editorial amendment does not have effect unless the information relating to it as specified in section 15(1)(a) and (b) is contained in the record compiled under section 15.

Part 4**Revisions to Ordinances****17. Powers to make revisions**

The Secretary for Justice may, by order in the Gazette—

- (a) make an amendment to an Ordinance for the purpose of securing consistency in expression within the Ordinance or with another Ordinance;
- (b) alter the form or arrangement of a section, by transferring words, by combining it in whole or in part with another section or other sections or by dividing it into subsections;
- (c) transfer a provision in an Ordinance to another Ordinance to which that provision more properly belongs;
- (d) divide an Ordinance into parts or divisions;
- (e) if the name, title, location or address of a department, office, officer or place has changed, make an alteration to that name, title, location or address appearing in an Ordinance to reflect the change; and
- (f) make an amendment that is consequential on any amendment made under this section (other than this paragraph).

18. Commencement of revision order

An order made under section 17 is not to come into operation before the expiry of the period within which a resolution providing for the amendment of the order may be passed in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Part 5

Additional Editorial Powers for Loose-leaf Edition

19. **Laws (Loose-leaf Publication) Ordinance 1990 amended**
The Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) is amended as set out in sections 20 and 21.
20. **Section 2 amended (Publication of Ordinances, etc. in a loose-leaf edition)**
- (1) Section 2(2), Chinese text—
Repeal paragraph (a)
Substitute
“(a) 將法例按類集合及編排序列；”.
 - (2) Section 2(2)(b)—
Repeal
“appears; and”
Substitute
“appears;”.
 - (3) Section 2(2)(c)—
Repeal the full stop
Substitute a semicolon.
 - (4) After section 2(2)(c)—
Add
“(d) change the sequence of definitions, or of items in a list or schedule, in any Ordinance; and
(e) make editorial changes to the format, layout, printing style or any other presentational aspect of any Ordinance.”.

- (5) Section 2—

Repeal subsection (7)

Substitute

- “(7) If—

- (a) the short title or citation of an Ordinance is altered under subsection (2)(b), and any provision of any Ordinance is altered accordingly under that subsection;
 - (b) the sequence of definitions, or of items in a list or schedule, in any Ordinance is changed under subsection (2)(d); or
 - (c) an editorial change is made to any Ordinance under subsection (2)(e),
- the altered provision or changed Ordinance has effect for all purposes as if the alteration or change had been made by another Ordinance.”.

21. **Section 3A added**

After section 3—

Add

“3A. Omission of Ordinances

- (1) The Secretary for Justice may omit an authenticated Ordinance from the loose-leaf edition.
- (2) For the purposes of subsection (1), an Ordinance is authenticated if a copy of the Ordinance, as published on an approved website, is certified by the Law Draftsman to be the consolidated version of the Ordinance as at a particular time on a particular date.
- (3) In this section—

approved website (認可網站) has the meaning given by section 2 of the Legislation Publication Ordinance (of 2011);

consolidated version (編訂版本) has the meaning given by section 2 of the Legislation Publication Ordinance (of 2011).”.

Part 6

Consequential Amendments

Division 1

Enactments Amended

22. Enactments amended

The enactments specified in Divisions 2, 3, 4, 5 and 6 are amended as set out in those Divisions.

Division 2

Amendments to Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990)

23. Section 1 heading amended

Section 1, heading—

Repeal

“Short title and commencement”

Substitute

“Short title”.

24. Section 1 amended (Short title)

Section 1—

Repeal subsection (2).

25. Section 6 repealed (Reprint of Ordinances)

Section 6—

Repeal the section.

26. **Laws (Loose-leaf Publication) Ordinance 1990 repealed**
The Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990)—
Repeal the Ordinance.

Division 3

Amendment to Revised Edition of the Laws Ordinance 1965 (53 of 1965)

27. **Revised Edition of the Laws Ordinance 1965 repealed**
The Revised Edition of the Laws Ordinance 1965 (53 of 1965)—
Repeal the Ordinance.

Division 4

Amendments to Interpretation and General Clauses Ordinance (Cap. 1)

28. **Section 13 amended (Citation of Ordinance)**
Section 13(1)—
Repeal paragraph (c)
Substitute
“(c) any chapter number lawfully given to it under the
authority of—
(i) any Ordinance providing for the issue of a revised
or other edition of the laws of Hong Kong; or
(ii) the Legislation Publication Ordinance (of
2011).”.
29. **Section 98A repealed (Rectification of errors)**
Section 98A—

Repeal the section.

30. **Section 98B repealed (Power to substitute dates)**
Section 98B—
Repeal the section.
31. **Section 98C repealed (Power to substitute title of subsidiary
legislation)**
Section 98C—
Repeal the section.
32. **Section 99 repealed (Reprint of Ordinances)**
Section 99—
Repeal the section.

Division 5

Amendments to Official Languages Ordinance (Cap. 5)

33. **Section 4B amended (Publication in an official language of the
text of an existing law enacted in the other)**
Section 4B—
Repeal subsections (2) and (3).
34. **Section 4D repealed (Secretary for Justice's power to achieve
consistency)**
Section 4D—
Repeal the section.

Division 6**Amendment to Criminal Procedure Ordinance (Cap. 221)****35. Section 113C amended (Provision for fines for offences)**

Section 113C—

Repeal subsection (5).

Explanatory Memorandum

The object of this Bill is to facilitate public access to the legislation applying in Hong Kong. The Bill provides for the establishment of an electronic database of legislation and approval of a website on which copies of legislation with a legal status may be published. The Bill also provides for the making of editorial amendments and revisions to Ordinances, and consolidates existing provisions for doing so.

Part 1—Preliminary

2. Clause 1 sets out the short title and provides for commencement. Clause 2 contains definitions that are necessary for the interpretation of the Bill.

Part 2—Database of Legislation

3. Clause 3 empowers the Secretary for Justice to establish and maintain an electronic database (*database*) of the legislation applying in Hong Kong, and to approve a website (*approved website*) on which the information in the database may be published and accessed.
4. Clause 4 provides for the contents of the database. The database is to contain, among others, consolidated versions of Ordinances that have been given chapter numbers and national laws applying in Hong Kong. The database may also contain, among others, bills, Ordinances as originally enacted or made (*as made Ordinances*) and other legislation.
5. Clauses 5, 6, 7 and 8 provide for the legal status of the following materials that are published on an approved website: copies of consolidated versions of Ordinances certified by the Law Draftsman (*authenticated copies of Ordinances*), and copies of national laws applying in Hong Kong, as made Ordinances and other legislation.

6. Clause 9 empowers the Secretary for Justice to cause to be published, in the form of booklets, authenticated copies of Ordinances. The clause also provides for the legal status of such booklets.
7. Clause 10 contains evidential provisions relating to, among others, documents purporting to be the materials described in paragraph 5 that are published on an approved website, and documents purporting to be booklets of authenticated copies of Ordinances.

Part 3—Editorial amendments and record

8. Clause 11 provides that the Secretary for Justice may give chapter numbers to Ordinances and arrange the grouping and sequence of Ordinances and other legislation in the database.
9. Clause 12 sets out the editorial amendments that may be made to Ordinances by the Secretary for Justice. These include, among others, correcting grammatical and clerical errors, renumbering provisions, replacing words indicating gender with gender-neutral words, and changing the presentational aspects of Ordinances.
10. Clauses 13 and 14 set out the ambit and effect of editorial amendments. An Ordinance that has been amended by editorial amendments has effect as if the amendments had been made by another Ordinance. Editorial amendments, however, must not change the legal effect of any Ordinance.
11. Clause 15 requires the Secretary for Justice to compile a record of the editorial amendments made. Clause 16 provides that those amendments would not have effect unless certain specified information relating to the amendments is contained in the record.

Part 4—Revisions to Ordinances

12. Clause 17 empowers the Secretary for Justice to make revisions to Ordinances by order in the Gazette. Revisions that may be made include amendments for the purpose of securing consistency in expressions, dividing Ordinances into parts or divisions, and

- alterations to names, titles, locations or addresses of departments, offices, officers or places appearing in Ordinances.
13. Clause 18 provides that an order for making revisions to Ordinances must not come into operation before the period during which the Legislative Council may pass a resolution to amend the order in accordance with section 34 of the Interpretation and General Clauses Ordinance (Cap. 1).

Part 5—Additional editorial powers for loose-leaf edition

14. Clause 20 empowers the Secretary for Justice to make specified amendments to Ordinances (including presentational aspects of Ordinances) in the loose-leaf edition of the Laws of Hong Kong. Clause 21 empowers the Secretary for Justice to omit an Ordinance from the loose-leaf edition, if a copy of the Ordinance, as published on an approved website, is certified by the Law Draftsman to be a consolidated version of the Ordinance.

Part 6—Consequential amendments

15. Clauses 22 to 35 deal with consequential amendments. The Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990), the Revised Edition of the Laws Ordinance 1965 (53 of 1965), and certain provisions of the Interpretation and General Clauses Ordinance (Cap. 1), the Official Languages Ordinance (Cap. 5) and the Criminal Procedure Ordinance (Cap. 221) are to be repealed.

Financial and Civil Service Implications

The Finance Committee of the LegCo has already granted funding approval for the development of the new electronic database. There will be additional work involved in authentication of legislation, reviewing and updating the text of existing legislation to improve its look and organization, and maintenance of the database. One support staff post to be required will be sought through the established resource allocation mechanism. The Department of Justice will absorb other resources required for this work within its existing allocations. The printing and sales costs of the existing sales of new or replacement pages and reprint booklets of the Loose-leaf Edition are recovered according to the “user-pays” principle. Revenue from the sales in 2009-10 was about \$1.4 million. It is expected that the sales will dwindle after the proposal has been implemented. It is not feasible to quantify the amount of reduction in revenue as it is difficult to assess the future requirement for the reprint booklets following the implementation of the proposal.

Economic Implications

A more user-friendly and modernised edition of Hong Kong legislation is conducive to the conduct of business activities and Hong Kong’s development as a world class city. There is no impact on competition.