

# 立法會

## *Legislative Council*

LC Paper No. CB(2)1999/10-11

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### **Paper for the House Committee meeting on 10 June 2011**

### **Report of the Bills Committee on Legislation Publication Bill**

#### **Purpose**

This paper reports on the deliberations of the Bills Committee on the Legislation Publication Bill ("the Bill").

#### **Background**

2. At present, an Ordinance as originally enacted or made (i.e. as-made Ordinance) is published in the Government Gazette and deemed to be authentic. To facilitate public access to the current version of Ordinances, all the Ordinances in force are published in a consolidated form in the Loose-Leaf Edition of the Laws of Hong Kong ("the Loose-leaf Edition"), which was first published in 1991. By virtue of the Laws (Loose-leaf publication) Ordinance 1990, the Loose-leaf Edition has legal status, i.e. a provision appearing in the Loose-leaf Edition is deemed to be correct unless the contrary is proved. Currently, it is updated twice a year (around June and November) in the form of replacement issues published by the Department of Justice ("DoJ").

3. DoJ also maintains an electronic database of Hong Kong legislation known as the Bilingual Laws Information System ("BLIS"), which has been made available to the public on the Internet since November 1997. BLIS contains a consolidated version of Hong Kong legislation in force on or after 1 July 1997 and legislation in force immediately before that date (i.e. on 30 June 1997). While BLIS is updated more frequently (the lead time for updating is normally three to

four weeks) than the Loose-leaf Edition, it has no legal status and is for reference only.

4. In April 2010, the Panel on Administration of Justice and Legal Services ("the AJLS Panel") of the Legislative Council ("LegCo") received a briefing from the Administration on its legislative proposal to establish an electronic database of the legislation applying in Hong Kong with legal status ("the Database"). Under the proposal, the Loose-leaf Edition will be gradually replaced by and migrated to the Database, while BLIS will cease operation after the launch of the Database for use by the public.

### **The Bill**

5. The Administration presented the Bill to LegCo on 20 October 2010. The main purposes of the Bill are to establish the Database, give legal status to copies of the legislation published in the Database, and empower the Secretary for Justice ("SJ") to make editorial amendments and revisions to Ordinances. It also provides for additional editorial powers for preparation of the Loose-leaf Edition and the retirement of the Loose-leaf Edition.

### **The Bills Committee**

6. The House Committee agreed at its meeting on 22 October 2010 to form a Bills Committee to study the Bill. Dr Hon Margaret NG was elected Chairman of the Bills Committee. A membership list of the Bills Committee is in **Appendix I**. The Bills Committee held a total of eight meetings with the Administration and invited stakeholders to give views on the Bill. A list of the organizations which have given views to the Bills Committee is in **Appendix II**.

### **Deliberations of the Bills Committee**

7. Members support the establishment of the Database but have expressed concern about the Bill in the following aspects -

- (a) safeguards for the Database's integrity;
- (b) authentication of copies of Ordinances;

- (c) SJ's editorial powers;
- (d) SJ's revision powers;
- (e) abolition of LegCo's powers under sections 98A, 98B and 98C of the Interpretation and General Clauses Ordinance (Cap. 1); and
- (f) repeal of the Laws (Loose-leaf Publication) Ordinance 1990.

8. The deliberations of the Bills Committee on these and related issues are set out below.

#### Safeguards for the Database's integrity

9. Members note the Finance Committee's approval of the financial proposal on the Database in May 2010. According to the Administration, subject to the passage of the Bill, the Database is expected to commence operation around the end of 2015-2016 on completion of internal testing if the project proceeds smoothly. The migration of all Ordinances from the Loose-leaf Edition to the Database is expected to be completed in 2020 at the earliest.

10. Members have expressed concern about the lack of specific measures to be taken by the Administration to protect the Database's integrity, particularly in respect of safeguards against possible security threats and fake legislation databases modelled on the Database. They have stressed that the provision of sufficient and effective safeguards for the Database's integrity is their key consideration of whether to support the Bill.

#### *Security threats*

11. Members have expressed worry about the difficulty to users in accessing the authenticated version of Ordinances if the Database is forced to shut down owing to hacking or multiple and co-ordinated on-line attacks, etc. The Administration has assured members that the security requirements for the Database will be in compliance with the security standards adopted by the Government. Security measures will be put in place to protect the Database. These include anti-virus and malicious code detection, internal and external firewalls from different

vendors, the installation of separate servers in different locations and disaster recovery mechanisms. The legislation data in different servers of the Database will be compared periodically. If any potential hacking activity or discrepancy in the servers is detected, the monitoring staff will be alerted for immediate follow-up actions. Legislation data in the Database will also have off-line periodic backups stored in permanent form. Members have called on the Administration to make a service pledge on the time required for restoring the Database should it be damaged. The Administration has advised that under its plan, the Database should be able to recover in less than several hours in case a disaster is identified.

12. Members note the Administration's emphasis that any unauthorized alterations to the Ordinances published in the Database, whether with malicious intent or not, will not have any legal effect or change the texts of the Ordinances. A public announcement will be issued to alert the public to such alterations, if any, as soon as practicable after they are identified.

#### *Fake legislation websites*

13. The appearance of fake legislation websites modelled on the Database has been another concern of members. According to the Administration, it has not been aware of any such websites in other common law jurisdictions. While total prevention of the appearance of such websites is impossible, it will take appropriate action (such as issuing a public warning) as soon as practicable after receiving any complaints or information about them.

14. Members have sought information on the safeguards to be in place for users of the Database to seek redress in case they are misled by false information published in the Database or a fake legislation website. In the Administration's view, it is not advisable to provide for statutory redress for reliance on inaccuracies in materials in an official version of legislation. It is also not aware of any major common law jurisdictions providing this kind of redress.

#### *Updating the Database*

15. At present, after an amendment to an Ordinance has come into

operation, the lead time for updating the printed copy of the Ordinance in the Loose-leaf Edition and the electronic copy in BLIS requires six to nine months and one to two weeks respectively. According to the Administration, the lead time for updating the consolidated version of an Ordinance published in the Database will be about five working days.

16. Members have expressed disappointment about the long lead time for updating the Database as proposed. They note the Administration's explanation that except for special circumstances (e.g. many amendments to Ordinances taking effect on the same day), the consolidated version of an Ordinance published in the Database will be updated upon the commencement of an amendment to the Ordinance.

#### Contents of the Database

17. Clauses 4(1) and (2) of the Bill provide for the contents of the Database. Under Clause 4(1), the Database is to contain the consolidated versions of Ordinances that have been given chapter numbers by SJ, national laws applying in Hong Kong, and SJ's record of editorial amendments to Ordinances. Under Clause 4(2), the Database may contain bills to be introduced or introduced into LegCo, as-made Ordinances, and other legislation, materials and information that SJ considers useful to users of the Database.

#### *Contents under Clause 4(1)*

18. Members note the Administration's advice that by virtue of section 3 of Cap. 1, the term "national laws applying in Hong Kong" in Clause 4(1)(b) of the Bill is defined as national laws applied in Hong Kong pursuant to the provisions of Article 18 of the Basic Law ("BL"). It does not include BL and related constitutional documents, such as Interpretations and Decisions on BL by the Standing Committee of the National People's Congress. Under the Administration's original plan, such constitutional documents may be covered by Clause 4(2)(c) as materials and information that SJ considers useful to users of the Database.

19. Members have expressed diverse views on whether BL should be

placed under Clause 4(1) or Clause 4(2). Some members consider that BL and other Hong Kong-related constitutional documents should not be included in Clause 4(1) because they do not have to undergo the legislative procedures in Hong Kong and SJ may not be in a position to verify their accuracy, and hence they should be treated as reference materials under Clause 4(2)(c). On the other hand, some other members are of the view that given its importance to Hong Kong, BL should be placed under Clause 4(1). The Bills Committee takes note of the view of its Legal Advisor that constitutional documents applying in Hong Kong may be placed under Clause 4(1) to accord them their constitutional status.

20. According to the Administration, Clauses 4(1) and (2) are intended to empower SJ to include certain contents in the Database. Whether constitutional documents applying in Hong Kong will be placed under Clause 4(1) or Clause 4(2) will not affect their importance and constitutional status. The Database will not indicate what contents are included in accordance with Clause 4(1) and what contents are included in accordance with Clause 4(2). Nevertheless, to address members' concern, the Administration has proposed to expressly put BL under Clause 4(1). Members also note that the contents to be provided in the Database will not be less than all the existing information in the Loose-leaf Edition and BLIS.

21. The Administration has also taken on board members' suggestion that given their importance, "as-made Ordinances" should be moved from Clause 4(2) to Clause 4(1). The Administration will move Committee Stage Amendments ("CSAs") to achieve the effect.

#### *Contents under Clause 4(2)*

22. Members have expressed concern about the criteria for SJ's consideration of including "other legislation, materials and information" under Clause 4(2)(c) in the Database. They have called on the Administration to consult the stakeholders in this regard. The Administration has explained that under Clause 4(2)(c), the Database may include reference materials that can facilitate users to use and understand Hong Kong Laws, such as a glossary of legal terms and the text of

international treaties and bilateral agreements. The Administration has undertaken to keep the stakeholders informed of the contents to be included in the Database at various stages of the Database project.

23. As the Database is to mainly contain legislation applying in Hong Kong, members have been concerned that the inclusion of "other legislation" under Clause 4(2)(c) in the Database may mislead users into believing that such legislation is applicable to Hong Kong. The Administration has agreed to move a CSA to delete "legislation" in Clause 4(2)(c).

24. Members have also expressed concern about the wide scope of Clause 4(2)(c). They consider that the inclusion of a lot of reference materials/information in the Database may render the Database cumbersome. Members suggest that the Database may provide hyperlinks to reference materials/information. The Administration has advised that as it may not have the resources to include a lot of materials/information in the Database under Clause 4(2)(c), it will attach hyperlinks to the Database where appropriate (e.g. when there is no external hyperlink management concern).

25. With reference to official electronic legislation databases in overseas common law jurisdictions, members suggest that the Database should -

- (a) ensure that the categorization of contents must be clear and easily identified;
- (b) provide information on the status of an Ordinance published therein, such as the currency of the version, the historical notes on the Ordinance, whether it has been verified by SJ, and whether its provisions are all in force; and
- (c) clearly differentiate the verified and unverified versions of Ordinances published therein.

26. Members welcome the Administration's acceptance of their suggestions.

### Authenticated copy of Ordinances

27. Clause 5 of the Bill provides for the status of authenticated copies of Ordinances published in the Database. Under Clause 5(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 published in the Database and certified by Law Draftsman ("LD") to be the consolidated version of the Ordinance as at that time on that date. Under Clause 5(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.

### *Authoritative version of legislation*

28. Members note that by virtue of section 98(1) of Cap. 1, a copy of an Ordinance, if signed by the Chief Executive ("CE ") and published in the Gazette, is deemed to be an authentic copy of that Ordinance as at the date of such publication. Given section 98(1) of Cap. 1, members have expressed concern that the authentic version of an Ordinance defined under section 98(1) of Cap. 1 is different from that under Clause 5, which appears that CE's signature will not be required for authentication of a copy of an Ordinance after the launch of the Database. Clause 5(1)(b) appears to require an authenticated copy of an Ordinance to be certified by LD only and does not require it to be gazetted. It is also difficult to ascertain the authenticity of a copy of an Ordinance published in the Database, as it appears that LD's certification of a copy of an Ordinance as an authenticated copy as at a particular time on a particular date will only be valid as at that time on that date.

29. The Administration has explained that an authentic copy of an Ordinance under section 98(1) of Cap. 1 and an authenticated copy of it under Clause 5 are conceptually different. The former is a copy of an Ordinance as originally enacted and published in the Gazette, whereas the latter is a consolidated version of an Ordinance published in the Database. By virtue of section 98(1) of Cap. 1, the copy of an Ordinance published in the Gazette is deemed to be the authentic version and serves as the fundamental version of the Ordinance. A copy of an Ordinance in the Database certified by LD as a consolidated version of an Ordinance as at

a particular time on a particular date is an authenticated copy of the Ordinance as at that time on that date. It is presumed, unless the contrary is proved, to correctly state the Ordinance as at that time on that date. This "presumed to be correct" status is comparable to that provided for copies of Ordinances currently included in the Loose-leaf Edition. If there is any doubt on the authenticity of the copy, users may check against the gazetted version.

*Inclusion of the "time" element*

30. Members consider the "time" element under Clause 5 in relation to the authentication of a copy of an Ordinance published in the Database unnecessary. Members note with concern that under Clause 5(1)(b), the commencement of an Ordinance at a particular time on a particular date will depend on LD's certification instead of what is stated on the face of the as-made Ordinance.

31. The Administration has explained that the inclusion of the "time" element in Clause 5 is to cater for certain provisions which may not commence at zero hour of a day. Regardless of the launch of the Database, the commencement date and time of an Ordinance have all along been, and will continue to be, dependant on what the as-made Ordinance states. Under Clause 5(1)(b), LD cannot certify the commencement date and time of an Ordinance but will only certify a consolidated version of the Ordinance published in the Database to be authenticated as at a particular time on a particular date.

32. Members have sought information on whether LD will perform certification under Clause 5(1)(b) only when amendments to an Ordinance are incorporated into the Ordinance as the consolidated version of the Ordinance to be published in the Database. The Administration has confirmed members' understanding and has advised that LD's certification is to ascertain the incorporation to be accurate. The consolidated version of an Ordinance so certified will be the current version until the Ordinance has been amended again and LD has performed another certification.

33. Notwithstanding the Administration's explanation, members

remained concerned about the ambiguity of Clause 5, particularly the expression "as at a particular time on a particular date" in sub-clause (1)(b), as it is unclear whether it refers to the date and time at which an Ordinance was signed by CE, or the date and time at which a user accesses the current version of an Ordinance published in the Database or retrieve its past version from the Database, or the state of an Ordinance published in the Database as at a particular time on a particular date.

34. To allay members' concern, the Administration has agreed to delete Clause 5 and add new Clauses 2(2) and 4A by CSAs.

#### SJ's editorial powers

35. Clause 12 of the Bill empowers SJ to make editorial amendments to an Ordinance. According to the Administration, such amendments will be minor, straightforward and uncontroversial in nature.

36. Members have expressed grave concern about the unclear scope of SJ's editorial powers under Clause 12, which may give rise to uncertainty and dispute. For instance, the conferment of wide powers on SJ under Clause 12(1)(c) to renumber the provisions of Ordinances may create difficulties to users of the Database in tracking the provisions. Noting that SJ's editorial amendments under Clause 12 is not subject to LegCo's scrutiny, members are also worried about the possible abuse of the editorial powers.

37. The Administration has explained that provisions for making editorial amendments to Ordinances have already existed but scattered in various Ordinances. Clause 12 seeks mainly to consolidate such provisions. While SJ's editorial amendments under Clause 12 are not subject to LegCo's scrutiny, they are bound by the overriding principle under Clause 13 that they cannot change the legal effect of any Ordinance. SJ must also compile a record of editorial amendments under Clause 15, which has to be made available in the Database for public inspection under Clause 4(1)(c). Clause 16 further provides that an editorial amendment will not have effect unless information relating to it is contained in the record. The Administration has stressed that the Bill aims to facilitate timely editorial amendments to Ordinances. If all

proposed editorial amendments must be subject to LegCo's scrutiny, the lead time for making minor editorial adjustments will be lengthened. The Administration has undertaken not to propose to exercise the editorial powers under Clause 12 if a risk of dispute is foreseen.

38. To allay members' concerns, the Administration has proposed to transfer the following SJ's editorial powers under Clause 12 to Clause 17 under which any changes made by SJ to Ordinances must be effected by subsidiary legislation which is subject to LegCo's scrutiny by way of negative vetting -

- (a) changing a reference to a date (Clause 12(1)(b));
- (b) changing the way of referring to or expressing a "provision" (Clause 12(1)(d));
- (c) making gender-neutral drafting changes (Clause 12(1)(f));
- (d) omitting obsolete or redundant provisions (Clause 12(1)(g));  
and
- (e) amending the heading of a provision or a group of provisions (Clause 12(1)(h)).

39. The Administration has also proposed to -

- (a) delete "or an error of a similar nature" in Clause 12(1)(a) and the whole Clause 12(1)(c) on the renumbering of provisions;
- (b) remove SJ's power to make editorial changes to the way of referring to or expressing a "penalty" in Clause 12(1)(d);
- (c) revise the wording of Clause 12(1)(e) to clarify that there has to be a deeming provision in the first place before SJ can alter the text of the relevant provisions to give effect to the intended meaning of the deeming provision;
- (d) revise Clause 12(1)(g) so that SJ will only be able to omit

enacting, expired or spent provisions;

- (e) limit the scope of SJ's power to re-arranging unnumbered items under Clause 12(1)(i) in view of members' concern about 12(1)(c); and
- (f) add a new Clause to empower SJ to insert, after an item in a list appearing in the text of one official language, the equivalent of that item in the other official language.

40. Members have agreed to the Administration's CSAs.

#### Additional editorial powers for the Loose-leaf Edition

41. Clause 20 of the Bill sets out the proposed amendments to section 2 of the Laws (Loose-leaf Publication) Ordinance 1990. To facilitate, among others, the future migration of the Loose-leaf Edition to the Database, the Administration has proposed to revise Clause 20 to apply the proposed revised Clause 12 to the Loose-leaf Edition. While expressing no objection to the proposed revised Clause 20, members are concerned about the availability of safeguards similar to those under Clauses 13, 15 and 16 in the exercise of SJ's editorial powers to the Loose-leaf Edition. The Administration has assured members that it will incorporate such safeguards in the Laws (Loose-leaf Publication) Ordinance 1990 and has agreed to move appropriate CSAs.

#### SJ's revision powers

42. Under Clause 17 of the Bill, SJ may make revisions to Ordinances. According to the Administration, such revisions may go beyond technical amendments and affect the contents of Ordinances. Clause 18 requires SJ to make such revisions by order in the Gazette and such an order is not to come into operation before expiry of the negative vetting period specified by section 34 of Cap. 1.

43. Members have expressed grave concern that certain provisions under Clause 17, such as subclause 17(c), do not clearly delineate the limit of revision powers to be given to SJ. In addition, the meanings of certain expressions in the provisions proposed by the Administration to be

transferred from Clause 12 to Clause 17, such as "the way of referring to or expressing a provision" under Clause 12(1)(d) and "any word, expression or provision which is obsolete or redundant" under Clause 12(1)(g)(ii), are too broad and may give rise to uncertainty and dispute. There is also concern as to whether a revision made by SJ under Clause 17(e) to the name, title, etc. of a department/officer may effect a change of powers of that department/officer. For instance, under the re-organization of the policy bureaux of the Government Secretariat in 2007, the increase of the number of Directors of bureaux and the change of their titles involved a reshuffle of the powers among the bureaux.

44. The Administration has explained that the exercise of the revision power under Clause 17(e) has to be based on the actual changes in the name, title, etc. of a department/officer. Clause 17(e) is intended to enable a revision to the text of Ordinances to reflect the change and is not for the purpose of initiating that change. The re-organization of the policy bureaux of the Government Secretariat in 2007 was conducted in accordance with Section 55 of Cap. 1. Clause 17(e) cannot be used to effect such a re-organization. Nevertheless, to alleviate members' concerns, the Administration has agreed to clearly state in Clause 17(c) that only saving or transitional provisions in an Ordinance may be transferred to another Ordinance to which that provision relates. The Administration will also move CSAs to delete the words "or expressing" from Clause 12(1)(d) and remove the power under Clause 12(1)(g)(ii) (i.e. omission of obsolete or redundant provisions) from the Bill.

#### *LegCo's scrutiny*

45. By virtue of Clause 18 of the Bill, any order in the Gazette by which SJ makes revisions to an Ordinance is subject to LegCo's negative vetting. Some members have queried why such revisions are not subject to LegCo's positive vetting. There is, however, a view that in the absence of Clause 18, SJ will have no choice but to initiate the positive vetting procedure to deal with all proposed revisions, including uncontroversial ones. If Clause 18 is vetoed, the editorial amendments under the provisions proposed to be transferred from Clause 12 to Clause 17 will also be subject to positive vetting. This scrutiny arrangement may not be necessary for such amendments.

46. The Administration has explained that it will involve a lot of legislative resources to require all proposed revisions to go through the

positive vetting procedure. The negative vetting procedure under Clause 18 will provide an efficient way to deal with uncontroversial revisions, and this arrangement is similar to those under Section 4D of the Official Languages Ordinance (Cap. 5) and section 98A of Cap. 1. Members consider the Administration's explanation and the proposed revised Clause 17 acceptable. The Administration has assured members that SJ's revision powers will be exercised prudently.

#### Abolition of LegCo's powers under sections 98A, 98B and 98C of Cap. 1

47. Sections 98A, 98B and 98C of Cap. 1 provide for LegCo's powers to scrutinize SJ's certain editorial amendments to Ordinances. By virtue of section 98A, SJ's rectification of any clerical or printing error appearing in any Ordinance printed or published pursuant to Cap. 1 has to be made by order published in the Gazette, and every order so made has to be laid before LegCo without unreasonable delay and can be annulled by a resolution passed by LegCo. Clauses 29 to 31 of the Bill provide for the repeal of sections 98A, 98B and 98C of Cap. 1.

48. Members have expressed concern about the repeal of section 98A of Cap. 1, which will dispense with LegCo's powers to scrutinize any order made by SJ to amend any Ordinance under Clause 12(1)(a) of the Bill. Members have sought explanation for enacting Clause 12(1)(a) instead of retaining section 98A of Cap. 1.

49. According to the Administration, it has taken a very cautious and meticulous approach to the preparation of section 98A orders pursuant to Cap. 1, and there has been no debate by LegCo on any of them since 1971 when section 98A was added to Cap. 1. Clause 12(1)(a), which is modeled on similar provisions in overseas common law jurisdictions, will be used in the same cautious and meticulous manner, and any such amendments will be subject to the procedural safeguards under Clauses 13, 15 and 16. Clause 12(1)(a) will facilitate prompt rectification of minor errors in the statute book and achieve the objective of section 98A of Cap. 1 more efficiently.

#### Retirement of the Loose-leaf Edition

50. By virtue of Clauses 26, 27 and 32 of the Bill, the Loose-leaf Edition will be migrated to and replaced by the Database gradually. Under Clause 9, SJ may cause an authenticated copy of any Ordinance to be published in the form of a booklet after the launch of the Database.

51. Members note that with the passage of the Bill, the Database will be the sole medium carrying the current consolidated version of Ordinances with authenticated status after the retirement of the Loose-leaf Edition. Members have expressed concern about the difficulty in accessing authenticated legislation in case of a shutdown of the Database owing to hacking, etc. They have called on the Administration to consider the feasibility of the co-existence of the Database and the Loose-leaf Edition.

52. The Administration has advised that after the launch of the Database and the gradual retirement of the Loose-leaf Edition, the Administration will continue to publish a printed copy of each as-made Ordinance in the Gazette as required under section 20(1) of Cap. 1. The Bill does not introduce any change to the publication requirement stated in that provision. Moreover, members of the public may obtain a printed copy of a consolidated version of an Ordinance by various ways, viz. downloading from the Database, purchasing from the Government's Information Services Department ("ISD"), subscribing to the official storage media (such as DVD-Rom) containing the verified copy of an Ordinance from ISD, and accessing public libraries. Such a copy will have legal status similar to that of the Loose-leaf Edition. The Administration has assured members that it will not seek to commence Clauses 26, 27 and 32 until after all the chapters in the Loose-leaf Edition have been verified and transferred to the Database, and the AJLS Panel, the two legal professional bodies and other stakeholders have been consulted.

#### Back capture of past versions of Ordinances

53. According to the Administration, the Database will include the past versions of Ordinances from 30 June 1997 to the day before the date on which the Database is available for public use. Such past versions are for users' information and do not have legal status.

54. Members have expressed concern that in view of the retirement of the Loose-leaf Edition and the absence of the past versions before 30 June 1997 in the Database, legislation users may have difficulty in tracking the changes to Ordinances before and after that date. Members have called on the Administration to provide in the Database the past versions of ordinances from at least the first issue of the Loose-leaf Edition in 1991 to 29 June 1997. If the exercise of back capturing these past versions is not conducted, it will be difficult to trace the past versions of Ordinances before the first issue of the Loose-leaf Edition.

55. In the Administration's view, the past versions of Ordinances between 1991 and 30 June 1997 can currently be traced from the Loose-leaf Edition, the Gazette and the related legal notices, albeit not so conveniently. The back capture of these past versions will involve immense human resources. According to the Administration's rough estimation, the cost of the whole exercise is about \$44.5 million. With limited resources, DoJ has to set priority and may not be able to take on the exercise before the Loose-leaf Edition has been fully migrated to the Database in 2020 at the earliest.

56. Some members are of the view that given its huge fiscal reserves, the Administration should well afford to conduct the exercise. They are worried that the Administration may neither wish to conduct the exercise by itself nor plan to outsource it. At members' request, the Administration has undertaken to bid for resources to conduct the exercise and reflect members' support in its bid. The Administration has also undertaken that even without additional resources, it will consider selectively back capturing certain Ordinances which have a high usage rate, or spreading out the exercise over a longer period of time.

#### Monitoring of the Database project

57. As the Database project will be a prolonged exercise involving massive tasks, the Bills Committee has requested the Administration to -

- (a) set up a working group consisting of main users of Hong Kong legislation, including representatives of the Judiciary, the Legal Service Division of the LegCo Secretariat, the Hong Kong Bar Association and the Law Society of Hong Kong, to monitor the project, and keep the working group updated on the progress of the project and solicit its views at regular intervals; and

- (b) report to the AJLS Panel on the project before the formal launch of the Database, including the views solicited from the working group.

58. The Administration has acceded to the Bills Committee's requests and advised that it will invite the stakeholders mentioned in (a) above and the Librarian's Association to form a Hong Kong Legislation Database User Liaison Group to keep track of the progress of the project.

### **Committee Stage amendments**

59. The CSAs to be moved by the Administration and agreed to by the Bills Committee are in **Appendix III**. The Bills Committee has not proposed any CSAs.

### **Resumption of Second Reading debate**

60. Subject to the moving of the proposed CSAs by the Administration, the Bills Committee supports the resumption of the Second Reading debate on the Bill on 22 June 2011.

### **Advice sought**

61. Members are invited to note the deliberations of the Bills Committee.

**Bills Committee on Legislation Publication Bill**

**Membership list**

<b>Chairman</b>	Dr Hon Margaret NG
<b>Members</b>	Hon Albert HO Chun-yan Hon LAU Kong-wah, JP Hon Cyd HO Sau-lan Dr Hon Samson TAM Wai-ho, JP Total : 5 Members
<b>Clerk</b>	Mr Thomas WONG
<b>Legal Adviser</b>	Mr Arthur CHEUNG
<b>Date</b>	22 November 2010

《法例發布條例草案》委員會  
Bills Committee on Legislation Publication Bill

曾向法案委員會表達意見的團體名單  
List of the organisations which have  
given views to the Bills Committee

1. Hong Kong Bar Association  
香港大律師公會
- \* 2. The Law Society of Hong Kong  
香港律師會
- \* 3. Legal Service Division of the Legislative Council Secretariat  
立法會秘書處法律事務部
- \* 4. Hong Kong Human Rights Monitor  
香港人權監察

\* 提交書面意見的團體  
Organizations which have submitted written views

Legislation Publication Bill

**Committee Stage**

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “This” and substituting “Subject to subsection (3), this”.
1	By adding— “ <b>(3)</b> This Part, Part 4 and Division 1, Division 2 (except section 26), Division 4 (except sections 28 and 29) and Division 5 of Part 6 come into operation on the day on which this Ordinance is published in the Gazette.”.
2	By deleting the clause and substituting— <b>“2. Interpretation</b>  (1) In this Ordinance— <b><i>approved website</i></b> (認可網站) means a website approved under section 3(b);

***consolidated copy*** (編訂文本), in relation to an Ordinance, means a copy of the Ordinance showing its text as amended by all permitted amendments that have taken effect as at a date specified in the copy;

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

***database instrument*** (資料庫文書) means an Ordinance, the Basic Law, a national law applying in Hong Kong or an item of materials or information referred to in section 4(2)(c);

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

***gazetted copy*** (刊憲文本), in relation to an Ordinance, means a copy of the Ordinance as originally enacted or made, and published in the Gazette;

***official verification mark*** (官方核證標記) means a symbol, word or statement, or a combination of any of them, specified by the Law Draftsman

on an approved website for the purposes of Part 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 2A(1) of the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990);

***verified copy*** (經核證文本)—see section 4A(1).

- (2) In this Ordinance, a reference to a database instrument as at a date specified in a copy or reproduction of a copy of the instrument includes, if a time on that date is specified in the copy or reproduction, a reference to the instrument as at that time on that date.”.

4(1)(a) By deleting “versions” and substituting “copies”.

- 4(1) By adding—
- “(aa) gazetted copies of Ordinances published in the Gazette on or after the date on which this Part comes into operation;
  - (ab) the Basic Law;”.
- 4(2)(a) By adding “and” at the end.
- 4(2) By deleting paragraph (b).
- 4(2)(c) By deleting “legislation,”.
- New By adding—
- “4A. Status of verified copies of database instruments**
- (1) A copy of a database instrument—
    - (a) that is published on or printed directly from an approved website; and
    - (b) that bears an official verification mark, is a verified copy of the instrument.
  - (2) A verified copy of a database instrument is presumed, unless the contrary is proved, to correctly state the instrument as at the date

specified in the copy.”.

5 to 9 By deleting the clauses.

10 By deleting subclauses (2) to (6) and substituting—

“(2) A document purporting to be a verified copy of a database instrument is presumed, unless the contrary is proved, to be a verified copy of the instrument.”.

New By adding immediately after clause 10—

**“Part 2A**

**Reproduction of Verified Copies of Database Instruments**

**10A. Interpretation**

In this Part—

*official booklet* (官方單行本) means a booklet published under section 10B(1);

*official storage medium* (官方儲存器) means a storage medium published under section 10C(1);

*storage medium* (儲存器) means a medium—

- (a) in which electronic data relating to verified copies of database instruments

are stored; and

- (b) from which verified copies of database instruments are capable of being reproduced.

#### **10B. Publication of official booklets**

- (1) The Secretary for Justice may cause reproductions of verified copies of database instruments to be published in the form of booklets.
- (2) A reproduction of a verified copy of a database instrument contained in an official booklet is presumed, unless the contrary is proved, to correctly state the instrument as at the date specified in the reproduction.

#### **10C. Publication of official storage media**

- (1) The Secretary for Justice may cause storage media to be published.
- (2) An electronic or printed reproduction of a verified copy of a database instrument accessed or printed directly from an official storage medium is presumed, unless the contrary is

proved, to correctly state the instrument as at the date specified in the reproduction.

**10D. Evidential provisions**

- (1) A document purporting to be a reproduction of a verified copy of a database instrument contained in an official booklet is presumed, unless the contrary is proved, to be such a reproduction.
- (2) A document purporting to be an electronic or printed reproduction of a verified copy of a database instrument accessed or printed directly from an official storage medium is presumed, unless the contrary is proved, to be such a reproduction.”.

11 By deleting everything after “may” and substituting—

“—

- (a) give a chapter number to an Ordinance and alter the short title or citation of the Ordinance; and
- (b) in the database, arrange the grouping and sequence of database instruments.”.

12

By deleting the clause and substituting—

**“12. Powers to make editorial amendments**

The Secretary for Justice may, in an Ordinance—

- (a) replace a reference to the short title or citation of another Ordinance that has been altered under section 11(a), by the altered short title or citation;
- (b) correct a grammatical, clerical or typographical error;
- (c) change the way of referring to or expressing a number, year, date, time, amount of money, quantity or measurement;
- (d) alter the text of a provision to reflect an amendment to the provision deemed to have been made by another provision;
- (e) omit any enacting, expired or spent provision;
- (f) change the sequence of definitions, or of unnumbered items in a list;
- (g) insert, after an item in a list appearing in the text of one official language, the

equivalent of that item in the other official language;

- (h) change the format, layout, printing style or any other presentational aspect; and
- (i) make an amendment that is consequential on any amendment made under this section (other than this paragraph).”.

14(1) By deleting “An” and substituting “Subject to section 16, an”.

14(3) In the definition of *publication date*, by deleting “version of the Ordinance that has incorporated the amendment” and substituting “copy of the Ordinance showing the amendment in its text”.

17 By deleting paragraphs (a) to (f) and substituting—

- “(a) make an alteration to an Ordinance for the purpose of securing uniformity in expression within the Ordinance or with another Ordinance;
- (b) alter the form or arrangement of a section of an Ordinance, by transferring words, by combining it in whole or in part with another section or other sections

of the Ordinance or by dividing it into subsections;

- (c) transfer a saving or transitional provision in an Ordinance to another Ordinance to which that provision relates;
- (d) organize the provisions of an Ordinance into, and assign numbers and headings to, groups of provisions, without changing the sequence of those provisions;
- (e) amend the heading of a provision or a group of provisions in an Ordinance to reflect the contents of the provision or the group of provisions;
- (f) 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;
- (g) amend an Ordinance to effect the replacement of a reference to a date in the form of a description by the actual calendar date;
- (h) amend an Ordinance to effect the replacement of a general reference to another Ordinance by—
  - (i) the short title or citation of that other Ordinance;
  - (ii) its number among the Ordinances of the year in

which it was enacted or made; or

- (iii) the chapter number given to it under section 11(a);
- (i) replace a word or expression in an Ordinance indicating gender or that could be taken to indicate gender by a gender-neutral word or expression;
- (j) amend an Ordinance to change the way of referring to a provision; and
- (k) make an amendment to an Ordinance that is consequential on any amendment made under this section (other than this paragraph).”.

19 By adding “, 20A” after “20”.

20 By deleting subclauses (1) to (5) and substituting—

“(1) Section 2—

**Repeal subsection (2)**

**Substitute**

“(2) The Secretary for Justice may, in the loose-leaf edition—

- (a) give a chapter number to an Ordinance and alter the short title or citation of the Ordinance; and
- (b) arrange the grouping and sequence of

legislation.”.

(2) Section 2—

**Repeal subsection (7).”.**

New By adding—

**“20A. Sections 2A and 2B added**

After section 2—

**Add**

**“2A. Power to make editorial amendments**

(1) The Secretary for Justice may, in an Ordinance published in the loose-leaf edition—

- (a) replace a reference to the short title or citation of another Ordinance that has been altered under section 2(2)(a), by the altered short title or citation;
- (b) correct a grammatical, clerical or typographical error;
- (c) change the way of referring to or expressing a number, year, date, time, amount of money, quantity or measurement;
- (d) alter the text of a provision to reflect an amendment to the provision deemed to have been made by another provision;
- (e) omit any enacting, expired or

spent provision;

- (f) change the sequence of definitions, or of unnumbered items in a list;
  - (g) insert, after an item in a list appearing in the text of one official language, the equivalent of that item in the other official language;
  - (h) change the format, layout, printing style or any other presentational aspect; and
  - (i) make an amendment that is consequential on any amendment made under this subsection (other than this paragraph).
- (2) Subsection (1) does not permit any amendment that would change the legal effect of any Ordinance.
  - (3) An Ordinance amended under subsection (1), as published in the loose-leaf edition, must indicate in a suitable place the fact that it has been amended under subsection (1).

## **2B. Record of editorial amendments**

- (1) The Secretary for Justice must compile a record containing—
  - (a) descriptions of editorial

- amendments made; and
- (b) other information that the Secretary for Justice considers useful to users of the record.
- (2) The record is to be published—
- (a) in the loose-leaf edition; and
- (b) in a form that the Secretary for Justice considers appropriate.
- (3) An Ordinance that is amended under section 2A(1) has effect for all purposes, on and after the effective date of the editorial amendment, as if the amendment had been made by another Ordinance that commenced on that date.
- (4) The effective date of an editorial amendment—
- (a) must not be a date which is earlier than the date on which the record containing a description of the amendment, as specified in subsection (1)(a), is first published under subsection (2); and
- (b) must be specified in the record.
- (5) In this section—

***editorial amendment*** (編輯修訂) means an amendment to an Ordinance made under section 2A(1).”.”.

- 21 By deleting the proposed section 3A(1) and (2) and substituting—
- “(1) The Secretary for Justice may omit a verified Ordinance from the loose-leaf edition.
- (2) For the purposes of subsection (1), an Ordinance is verified if a consolidated copy of the Ordinance, as published on an approved website, bears an official verification mark.”.
- 21 In the proposed section 3A(3), in the definition of *approved website*, by deleting “section 2” and substituting “section 2(1)”.
- 21 In the proposed section 3A(3), in the definition of *consolidated version*—
- (a) by deleting “*version* (編訂版本)” and substituting “*copy* (編訂文本)”;
- (b) by deleting “section 2” and substituting “section 2(1)”;
- (c) in the English text, by deleting the full stop and substituting a semicolon.
- 21 In the proposed section 3A(3), by adding—
- “*official verification mark* (官方核證標記) has the meaning given by section 2(1) of the Legislation Publication

Ordinance ( of 2011).”.

Part 6,  
heading

By adding “**Repeals and**” before “**Consequential Amendments**”.

28

In the proposed section 13(1)(c), by deleting subparagraphs (i) and (ii) and substituting—

- “(i) the Legislation Publication Ordinance ( of 2011); or
- (ii) any other Ordinance providing for the issue of a revised or other edition of the laws of Hong Kong.”.