

Bills Committee on Professional Accountants (Amendment) Bill 2013
Follow-up to meeting on 9 July 2013

Having consulted the Department of Justice, the Administration's responses to the questions raised by the Bills Committee are as follows –

- (a) the Department of Justice's policy or practice on the modernisation of legislation regarding the replacement of the word "shall" by the word "must" in existing ordinances

The Law Drafting Division ("LDD") is committed to modernising legislation by plain language. In this connection, "must" is generally regarded as the plain language equivalent of "shall". Paragraph 9.2.18 of the *Drafting Legislation in Hong Kong: A Guide to Styles and Practices* (the "Guide") published by LDD in 2012 contains guidelines for use in amending legislation. Amongst other things, it states that "must" and "shall" should not be used in the same subsection, and the existing references to "shall" in the same subsection should be changed to "must". The guideline further states that for the sake of tidiness, consideration should be given to changing the references to "shall" in the proximity of the amended provision on the understanding that the amendment is purely consequential.

- (b) when such amendment will be made, for instance whether the amendment would apply to the relevant provisions covered by an amendment bill only or other provisions of the ordinance even they are not covered by the bill

The LegCo Member who moved the Professional Accountants (Amendment) Bill 2013 proposed amendments to section 28D(2)(c)(ii) and (6)(a) of the Professional Accountants Ordinance (Cap. 50). According to paragraph 9.2.16 of the Guide, "must" can be used in the newly added provisions to impose obligations and prohibitions, despite other existing provisions of the Ordinance being amended also impose obligations and prohibition using "shall".

Since "must" is used in the newly added provisions in the Bill, according to paragraph 9.2.18 of the Guide, all references to "shall" in subsection (2) of that section should be changed to "must" accordingly, and for the sake of

tidiness, consideration should also be given to changing all references to “shall” in the proximity of that provision to “must”. It was according to this principle that LDD suggested the Hong Kong Institute of Certified Public Accountants to consider changing all references to “shall” in the whole section 28D to “must”. LDD’s suggestion was accepted by the Institute.

Financial Services and the Treasury Bureau

26 July 2013