

立法會
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Paper for the House Committee meeting on 16 June 2000

**Report of the Bills Committee on
Interpretation and General Clauses (Amendment) Bill 1999**

Purpose

This paper reports on the deliberations of the Bills Committee on Interpretation and General Clauses (Amendment) Bill 1999.

Background

2. The general rule at common law was that in the interpretation of statutes the courts should not go beyond the language of an enactment itself to look at the related parliamentary materials in order to ascertain the intention of the Parliament. This rule has exceptions and has recently been relaxed by the House of Lord's decision in *Pepper v Hart* ([1993] 1 All ER 42) which permits reference to parliamentary materials as an aid to interpretation of statutes where the legislation is ambiguous or obscure or leads to an absurdity; the material relied on consists of one or more statement by the promoter of a bill together with, if necessary, such other parliamentary material as is necessary to understand such statements and their effect; and the statements relied on are clear. This decision is applicable in the Hong Kong Special Administrative Region (HKSAR).

3. The Law Reform Commission of Hong Kong (LRC) issued its Report on Extrinsic Materials as an Aid to Statutory Interpretation in March 1997. The Report recommended, inter alia, that the common law principles relating to the use of extrinsic materials in statutory interpretation be codified and modified by legislation. This was to be done by appropriate amendments to the Interpretation and General Clauses Ordinance (Cap. 1) with section 15AB of the Australian Acts Interpretation Act 1901 as model.

The Bill

4. The Bill seeks to implement the recommendations of the LRC made in its Report on Extrinsic Materials as an Aid to Statutory Interpretation issued in March 1997 that the law regarding the use of extrinsic material as an aid to statutory interpretation be codified and clarified. Since Cap.1 only applies to ordinances, the proposed amendments will apply only to ordinances, and not to the Basic Law.

The Bills Committee

5. At the meeting of the House Committee on 12 March 1999, Members agreed that a Bills Committee be formed to study the Bill. The membership list of the Bills Committee is in **Appendix I**.

6. Under the chairmanship of Hon Albert HO Chun-yan, the Bills Committee held four meetings with the Administration between 31 March 1999 and 9 September 1999. The Committee also met the representative of the Hong Kong Bar Association and considered the views from The Law Society of Hong Kong.

7. Scrutiny of the Bill was held in abeyance between early October 1999 and the end of May 2000 at the request of the Administration as it needed time to consider the points of principle raised by the Bills Committee. The Administration reverted to the Bills Committee on 3 June 2000.

Deliberations of the Bills Committee

8. The Bills Committee has discussed in detail the provisions in the Bill. The Bills Committee is particularly concerned about whether there is a need for the Bill and whether now is the appropriate time for enactment of the Bill. A gist of the deliberations of the Bills Committee is summarized below.

Administration's arguments for the Bill

9. The Administration has explained that the common law rules associated with *Pepper v Hart*, whether before or after that case, and the consideration of extrinsic material generally are disparate and complicated, and the case law is not readily accessible to the ordinary users of ordinances. Furthermore, the LRC has noted that, despite *Pepper v Hart*, a number of areas remain unclear, such as uncertainty about the extent to which reference may be made to parliamentary material other than the second reading speech. Accordingly, it would be desirable to codify and clarify the common law position, or slightly modify it where appropriate, by setting out the reasonably settled rules in a single, simple and accessible statutory document.

10. The Administration's main arguments in support of the Bill are summarized as follows -

- (a) The proposed new section 19A would provide an accessible, bilingual, user-friendly guide to a complex and obscure area of the law by specifying, under the proposed section 19A(2), a non-exhaustive list of the more important extrinsic material which may be considered as relevant in the interpretation of an ordinance, and allowing any other material which might be relevant to be admitted under the generality of proposed section 19A(1).
- (b) Since the proposed section 19A removes the need to argue issues of admissibility on the basis of case law by specifying the type of extrinsic material which may be used, much time and costs of litigation would be saved in reducing the need to research and argue on case law, and enabling the parties and the court to proceed directly to the question as to whether any material sought to be introduced by the parties is sufficiently relevant to assist in interpreting the provision of the ordinance in question.
- (c) The proposed section 19A expressly preserves judicial flexibility since the court is neither required to refer to, nor prohibited from referring to, any extrinsic material, and the common law is preserved under the proposed section 19A(7).
- (d) The Administration does not claim that there is a pressing need for the Bill, but this criterion only applies to a narrow range of legislation, for example, where it is sought to restrict fundamental rights. As with most legislation, the object of the Bill is to make a useful improvement in the general law.

Views of the Bills Committee

11. Members have expressed reservations about the Bill. The major concerns are summarized as follows -

- (a) The scope of proposed section 19A(2)(a) is very wide in that if any material not forming part of the ordinance is capable of assisting in ascertaining the meaning of the provision, consideration may be given to that material to determine the meaning of the provision. These include any document printed together with the text of the ordinance by the Government Printer.
- (b) The proposed section 19A(2)(c) provides that the reports of foreign Law Commissions and of similar bodies on legislation which is model for the Hong Kong ordinance may be used as an extrinsic aid. This is an innovation of Hong Kong and it is beyond codification of interpretation rules. The proposed provision is not found in section 15AB of the Australian Act on which the Bill is based. The evidence of legislative intent should be derived

from discussions in the legislative process of Hong Kong, or the relevant LRC report of Hong Kong rather than an overseas report.

- (c) The proposed section 19A(2)(g) allows any relevant report of a committee of the Legislative Council (LegCo) made before the enactment of the provision to be extrinsic aids. Proposed section 19A(2)(i) provides for the Official Records of Proceedings of LegCo to be considered as an extrinsic aid. There is a clear difference between the local legislature and the parliamentary system of the jurisdictions which have introduced similar legislation on statutory interpretation. Unlike other parliamentary systems with a government majority, the HKSAR Government does not have any member in the legislature nor in the committees. The decision of LegCo committees therefore cannot reflect the intent of the Government introducing the bill. Moreover, the decisions of committees are not binding on Members of LegCo. The Official Records of Proceedings may not be useful for ascertaining the meaning of a provision of an ordinance.
- (d) The common law will continue to apply and develop in Hong Kong. There is a developing trend to make more exceptions to the exclusionary rule. If Hong Kong is to follow Australia in codifying the rules of interpretation, it would not be able to benefit from the development of the common law in other jurisdictions.
- (e) The Bill may not bring about cost saving as the reduction in researching and photocopying of case law may be offset by an increase in the perusing and photocopying of Official Recording of Proceedings of LegCo or other relevant documents as listed in the proposed section 19A(2). Materials listed in the proposed section 19A(2) might each have to be argued as to how it is to assist the court in interpretation. It would widen the scope of materials which legal practitioners would need to examine. The Australia experience has indicated that following the enactment of section 15AB of the Australian Act, counsel and legal representatives in Australia had spent more time on cases until the courts found it necessary to put clear and appropriate limits on the use of extrinsic materials.

12. The Bills Committee has noted that during the recent consultation exercise conducted by the Administration, the Hong Kong Bar Association reiterates its reservations about enactment of the Bill. In the view of the Bar Association, it is too early to decide whether the principles in *Pepper v Hart* should be adapted for use in Hong Kong which has a very different constitutional set-up where the promoters of bills are not accountable to the legislature. The Administration should wait a few years and see how the constitutional arrangement works before introducing the Bill. The Law Society of Hong Kong reaffirms that it supports the Bill in principle. Although the Law Society considers that there is no pressing need for the Bill, it is of the view that there does not appear to be valid justification for postponing the Bill's passage. Some

members of the teaching staff at the School of Law of the City University of Hong Kong, some members of the teaching staff at the Faculty of Law of The University of Hong Kong and the Judiciary have also indicated support for the Bill.

13. The Bills Committee has pointed out to the Administration that the concerns of the Bills Committee have not been fully addressed in the consultation exercise. Though the Administration has indicated that it is willing to consider proposing amendments to address some of the concerns, the Bills Committee considers that the Committee should hear the views of the legal academics of the two Universities. However, it would be extremely difficult to schedule further meetings for the purpose and it would be unrealistic to expect that scrutiny of the Bill could be completed within the current session, given the limited time remaining. As there is no pressing need for the Bill to be enacted, the Bills Committee does not support that the Second Reading debate on the Bill be resumed in the current legislative session.

Advice sought

14. Members are invited to note the report of the Bills Committee.

《1999年釋義及通則(修訂)條例草案》委員會

Bills Committee on
Interpretation and General Clauses
(Amendment) Bill 1999

Membership List

何俊仁議員(主席)	Hon Albert HO Chun-yan (Chairman)
李柱銘議員	Hon Martin LEE Chu-ming, SC, JP
吳靄儀議員	Hon Margaret NG
夏佳理議員	Hon Ronald ARCULLI, JP
許長青議員	Hon HUI Cheung-ching
曾鈺成議員	Hon Jasper TSANG Yok-sing, JP

合共：6位議員

Total：6 Members

日期：1999年5月5日

Date：5 May 1999