

立法會
Legislative Council

LC Paper No. LS 100/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 3 March 2000**

**Legal Service Division Further Report on
Security and Guarding Services (Amendment) Bill 2000**

At the House Committee meeting held on 18 February 2000, Members agreed to defer decision on the Bill pending-

- (a) Legal Service Division's ("LSD") scrutiny of the legal and drafting aspects of the Bill; and
- (b) Hon Lee Cheuk-yan's discussion with the Chairman of the Security and Guarding Services Industry Authority ("the Authority") and the Administration about the proposal to expand the size of membership of the Authority.

2. In the course of our scrutiny of the Bill, LSD has raised certain technical points with the Department of Justice ("DoJ"). Members may refer to copies of the correspondence between LSD and DoJ at the Annexure. As a result of our enquiry, the Administration has agreed to move a technical amendment to proposed section 24A(4), so that it will be subject to proposed section 24A(11). The legal effect is that it will be made clear that the Authority is empowered, if circumstances so required, to vary the conditions of a licence while the Police is investigating the application by the licensee for variation of conditions of licence.

3. With the proposed Committee Stage amendment, LSD is satisfied that the legal and drafting aspects of the Bill are in order. Subject to Members' view on policy, the Bill is ready for resumption of Second Reading debate.

Encl

Prepared by

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1 March 2000

Annex

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24 February 2000

BY FAX

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Total no. of page(s) : 2

Dear Betty,

Security and Guarding Services (Amendment) Bill 2000

Following our earlier telephone conversation, there are 3 outstanding points for your further clarification in relation to the Bill, namely—

new section 9

Would the "privileges and immunities" of a person in "civil proceedings conducted by the court of First Instance" be the same as the existing section 9 which refers to "privileges and immunities" of a person in "civil proceedings before a court"?

Has similar drafting formula been adopted in other Ordinances?

section 24(4) and new section 24A(13)

Is it necessary to provide expressly in section 24(4) and new section 24A(13) the power for the Authority to reject an application?

new section 24A(4) and (11)

New section 24A(4) provides that in respect of an application by a licensee for variation of conditions of licence, no step should be taken by the Authority before a specified period of time. New section 24A(11), however, provides that before

an application is determined, the Authority may by notice in writing to the Commissioner and to the licensee vary the conditions of the licence until such time as the application is determined. In the light of the interaction between the 2 provisions, is it necessary to subject new section 24A(4) to section 24A(11)?

It is appreciated that your reply, in both languages, could reach us by 29 February 2000 for our further report on the Bill to the LegCo House Committee meeting to be held on 3 March 2000.

Yours sincerely,

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c.c. Miss Eliza Yau
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29 February 2000

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URGENT BY FAX
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Dear Stephen,

Security and Guarding Services (Amendment) Bill 2000

I refer to your letter dated 24 February 2000. Relevant parties within the Administration have been consulted and I set out a consolidated reply as follows –

Proposed section 9 (Clause 7): Privileges and Immunities

At common law, judges of superior courts and judges of inferior courts (i.e. courts which are subject to control by mandamus, certiorari and prohibition) enjoy varying degree of protection from actions in tort for acts performed in furtherance of their office –

- (a) for acts done within jurisdiction, judges of superior courts and judges of inferior courts alike enjoy immunity from actions in tort even if they have acted maliciously or corruptly;
- (b) for acts done without jurisdiction, judges of an inferior court are not protected, while a judge of a superior court is protected when he is acting in the bona fide exercise of his office and under the belief that he has jurisdiction, though he may be mistaken in that belief and may not in truth have any jurisdiction.

(See Administrative Law by H W R Wade, 7th ed., pp.796 to 799; Sirros v Moore [1975] 1 QB 118, Lord Denning's speech at pp. 132 to 135; re McC [1985] 1 AC 528)

The Court of First Instance is a superior court in this context.

The existing section 9 of the Security and Guarding Services Ordinance (Cap. 460) ("SGSO") provides that, during any meeting of the Authority relating to an application under the Ordinance, the members of the Authority ... shall have the same privileges and immunities as they would have if that meeting were civil proceedings before a court. The term "court" is not defined in the Ordinance but is defined in the Interpretation and General Clauses Ordinance (Cap. 1) to mean "any court of the Hong Kong Special Administrative Region of competent jurisdiction". It is not clear whether members of the Authority enjoy immunity as if they were judges of a superior court or of an inferior court. The new section 9 proposed in the Bill makes it clear that the members will enjoy immunity as if they were judges of a superior court.

Precedents drafted in similar wording i.e. referring to privileges and immunities in civil proceedings before the Court of First Instance are –

- (a) Section 12(3) of the Commissions of Inquiry Ordinance (Cap. 86);
- (b) Section 54(2)(d) of the Estate Agents Ordinance (Cap. 511).

Section 24A(13) & 26 (Clauses 18 & 21): Appeal

It is unlikely that a court will adopt the narrow construction of s.26 of the SGSO that an appeal is only permitted if the Authority (or the Commissioner of Police) exercises its powers in favour of the applicant.

In fact, the Administrative Appeals Board has so far adopted a wide interpretation of section 26 and has dealt with 3 appeals made under that section. Two were brought against the Authority's decision under section 21(2) (refusal to grant a licence); the third was against a decision under section 25(4) (revocation of a licence).

Section 26 itself does not refer to "granting of an application" or any similar wording. It uses the word "decision", which may mean granting or rejecting an application. The narrow interpretation, which unduly restricts the right of appeal, is not the legislative intent.

Proposed section 24A(4) & (11) (Clause 18): interim variation

The policy intent is that an interim variation should be possible even before the "material date". This will enable the Authority to make prompt decisions, if the circumstances so require, regarding variation of licence conditions while Police investigation is still underway. The Administration is prepared to move a CSA to add "Subject to subsection (11)," at the beginning of section 24A(4).

Yours sincerely,

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