

立法會
Legislative Council

LC Paper No. LS68/02-03

**Paper for the House Committee Meeting
on 21 March 2003**

**Legal Service Division Report on
Law Amendment and Reform (Miscellaneous Provisions) Bill 2003**

- I. SUMMARY**
1. **Objects of the Bill** To make miscellaneous amendments to various Ordinances and subsidiary legislation.

 2. **Comments**
 - (a) Apart from the additional requirement of attending mandatory practice management course and the setting up of the Standing Committee on Legal Education and Training, the amendments to the Legal Practitioners Ordinance (Cap. 159) may be considered minor amendments.
 - (b) The addition of the proposed section 23A to the Conveyancing and Property Ordinance (Cap. 219) is to address difficulties arising from a Court of Appeal decision.
 - (c) The amendment to the Costs in Criminal Cases Ordinance (Cap. 492) closes a gap in existing legislation.
 - (d) The replacement of references to "Crown servant" by "prescribed officer" in the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204) was supported by the Bills Committee on the Adaptation of Laws Bill 2001.

 3. **Public Consultation** The professional bodies and the real property industry have been consulted in respect of the proposed amendments to CPO. No public consultation has been conducted in respect of the other amendments

 4. **Consultation with LegCo Panel** The major proposals in the Bill have been discussed by the Panel on Administration of Justice and Legal Services at its meetings on 26 November 2001, 20 March, 24 June, 28 October and 13 December 2002, 27 January and 24 February 2003.

 5. **Conclusion** Upon the clarification of the few drafting points, the Bill should, subject to Members' views, be ready for the resumption of Second Reading debate.

II. REPORT

Objects of the Bill

To amend

- (a) the Legal Practitioners Ordinance (Cap. 159) (LPO) to add a requirement for the issue of a solicitor's unconditional practising certificate, to set up a Standing Committee on Legal Education and Training, and to provide for other minor amendments;
- (b) the Conveyancing and Property Ordinance (Cap. 219) (CPO) to provide for presumptions of due execution of deeds by persons authorized by corporations aggregate;
- (c) the Costs in Criminal Cases Ordinance (Cap. 492) (CCCO) to enable a magistrate to award costs to a defendant on a review of his decision instituted by the prosecution;
- (d) the Labour Tribunal Ordinance (Cap.25) (LTO) and the Small Claims Tribunal Ordinance (Cap. 338) (SCTO) to allow certain public officers to appear on behalf of the Secretary of Justice before those Tribunals;
- (e) the Prevention of Bribery Ordinance (Cap. 201) (POBO) and the Independent Commission Against Corruption Ordinance (Cap. 204) (ICACO) by replacing references to "Crown servant" with "prescribed officer", and adding a definition of the term in both Ordinances; and
- (f) various Ordinances and subsidiary legislation to effect miscellaneous amendments to remove existing errors and to update references to titles of Ordinances.

LegCo Brief Reference

- 2. LP 924/00C V issued by the Department of Justice in March 2003.

Date of First Reading

- 3. 19 March 2003.

Comments

Legal Practitioners Ordinance (Cap. 159)

- 4. Section 6(6) of LPO requires every solicitor to have been bona fide employed in the practice of a solicitor in Hong Kong for at least 2 years prior to his application for the first issue of a practising certificate allowing him to practice on his own account or in partnership (unconditional practising certificate). The proposed new subsection (6B) imposes a new requirement. A solicitor must also successfully complete in accordance with guidelines as may be issued by the Law Society of Hong

Kong (the Society) from time to time a mandatory course in practice management provided or approved by the Society before he may apply for the unconditional practising certificate.

5. The proposed new section 74A establishes a Standing Committee on Legal Education and Training. It specifies its functions and the composition, and the term of office and mode of appointment of its chairman and other members. The existing Advisory Committee on Legal Education will be dissolved when the new section 74A comes into operation.

6. The above provisions will commence on a date to be appointed by the Secretary of Justice by notice published in the Gazette.

7. The adding of "or officer" after "member" in section 9AA (not yet effective) of LPO allows the Society to have disciplinary jurisdiction over officers (who may not be legal practitioners) of a solicitor corporation. This provision will come into operation on the commencement of section 4 of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997).

8. The proposed new subsection (4A) to be added to section 40A (not yet effective) of LPO enable the Chief Judge to delegate to a judge designated by him the exercise of his power under section 40A(4) to specify in particular case the years of practice required before a solicitor may be appointed as a notary public in Hong Kong.

9. Subsections (6), (10) and (11) of section 40E of LPO are amended to replace references to the Chief Justice with the Council of the Society of Notaries. This puts the Council of the Society of Notaries in full control of the issuing of practising certificates and to be the appellate authority in matters relating to the issuing of practising certificates. These amendments and the amendment referred to in paragraph 8 will come into effect on the commencement of section 3 of the Legal Practitioners (Amendment) Ordinance (27 of 1998).

10. The amendment to section 55 of LPO removes the 6 month time limit to bring proceedings in respect of any offence under section 46 (pretending to be a legal practitioner or his employee), 47 (preparing instruments by unqualified persons), 48 (preparing papers for probate by unqualified persons), 50B (offering services as practitioner of foreign law without qualifying in Hong Kong) or 54 (failure to disclose striking off roll or suspension from practice).

Conveyancing and Property Ordinance (Cap. 219)

11. Section 23 of CPO states that an instrument appearing to have been duly executed shall, until the contrary is proved, be presumed to have been duly executed. In Grand Trade Development Ltd. v. Bonance International Ltd. [2001] 3 HKC 137, the Court of Appeal held that in relation to an instrument required to be executed by a corporation under seal, section 23 would only apply when the relevant signatory had signed with a description that he had been duly authorized by the board of directors. Prior to this decision, conveyancing lawyers believed that signing by directors in compliance with the articles of association of the relevant corporation would invoke

the presumption under section 23. Deeds so executed no longer appear to have been duly executed. People relying on such deeds to prove title cannot prove a good title. The proposed new section 23A seeks to remedy the situation.

12. The proposed new section 23A applies only in very specific circumstances. Only deeds executed *prior to* the coming into effect of the section by signatories capable of being authorized under articles of association or other instrument of the relevant corporation, and produced as proof of title in relation to a contract of sale of land entered into *after* the commencement of the section may be helped. Deeds executed by corporations more than 15 years before contracts of sale will be conclusively presumed to have been validly executed.

Costs in Criminal Cases Ordinance (Cap. 492)

13. Section 3(1)(d) of CCCO is amended to enable a magistrate to award costs to a defendant upon the application of the prosecution to review his decision and the magistrate confirms his decision. This closes a gap in the existing legislation.

Labour Tribunal Ordinance (Cap. 25)

14. Paragraph (f) is added to section 23(1) of LTO to enable a public officer, who is not a barrister or a solicitor, to appear before the Tribunal on behalf of the Secretary for Justice, if the Secretary for Justice is a claimant or a defendant.

Small Claims Tribunal Ordinance (Cap. 338)

15. Paragraph (e) is added to section 19(1) of SCTO to the same effect as described in paragraph 14.

Prevention of Bribery Ordinance (Cap. 201)

Independent Commission Against Corruption Ordinance (Cap. 204)

16. All references to "Crown servant" are adapted to "prescribed officer" and a new definition of "prescribed officer" is added in section 2(1) of POBO and section 2 of ICACO respectively. "Prescribed officer" in addition to persons holding an office of emolument, whether permanent or temporary, under the Government, also includes principal officials of the Government appointed under the Basic Law, the Monetary Authority and his staff appointed under section 5A of the Exchange Fund Ordinance (Cap. 66), the Chairman of the Public Service Commission, staff of the Independent Commission Against Corruption, and judicial officers holding judicial offices specified in Schedule 1 to the Judicial Officers Recommendation Commission Ordinance (Cap. 92), judicial officers appointed by the Chief Justice and staff of the judiciary.

Miscellaneous Amendments

17. The 68 items of amendments are largely technical amendments rectifying errors and updating references to titles of Ordinances. Item 25 will only come into operation upon the commencement of section 13 of the LPO.

18. Save and except as above expressly mentioned, the provisions of the Bill will come into operation upon its passage and publication in Gazette.

Public Consultation

19. The proposed establishment of the Standing Committee on Legal Education and Training follows the recommendations of the Steering Committee on Legal Education and Training in Hong Kong, which were made after community-wide consultation.

20. The Law Society of Hong Kong, Bar Association, Consumer Council, Hong Kong Conveyancing and Property Law Association Limited and other interested persons and bodies have been consulted on the amendment proposals in relation to CPO. The Law Society, the Bar Association and stakeholders in the real property industry support the proposed amendments to CPO.

21. The replacement of references to "Crown servants" by "prescribed officer" and adding the definition of "prescribed officer" to POBO and ICACO have been accepted by the Bills Committee for the Adaptation of Laws Bill 2001. (See paragraphs 26, 33, 34 and 40 of the Report of the Bills Committee to the House Committee (Ref: LC Paper No. CB(2)624/02-03)).

Consultation with LegCo Panel

22. The major proposals in the Law Amendment and Reform (Miscellaneous Provisions) Bill 2003 had been discussed by the Panel on Administration of Justice and Legal Services (the Panel) at its meetings on 26 November 2001, 20 March, 24 June, 28 October and 13 December 2002, and 27 January and 24 February 2003.

Proposed amendment to Legal Practitioners Ordinance (Cap. 159) to provide for the establishment of the Standing Committee on Legal Education and Training

23. At its meeting on 24 June 2002, the Panel was briefed on the Second Progress Report on the Review of Legal Education and Training in Hong Kong. The Panel was informed of the Administration's proposal to establish a standing umbrella body by legislation to replace the current Advisory Committee on Legal Education to monitor the future direction of legal education. At its meeting on 13 December 2002, the Panel was briefed on the proposed legislative amendments, and did not raise any queries.

Proposed amendment to Costs in Criminal Cases Ordinance (Cap. 492)

24. At its meeting on 26 November 2001, the Panel discussed a proposal made by the Law Society of Hong Kong to empower a magistrate to award costs to a defendant if the magistrate reviewed his decision upon application of the prosecutor and confirmed his original decision. Both the Hong Kong Bar Association and the Administration expressed support for the proposal.

25. At its meeting on 13 December 2002, the Panel was briefed on the legislative amendments to implement the proposal, and did not raise any queries.

Proposed amendments to Prevention of Bribery Ordinance (Cap. 201) and Independent Commission Against Corruption Ordinance (Cap. 204)

26. The proposal to replace the definition of "Crown servant" with a definition of "prescribed officer" in the two Ordinances was originally included in the Adaptation of Laws Bill 2001. Having regard to the view of the Bills Committee that the proposal was not adaptation in nature, the Administration moved Committee Stage amendments to delete all clauses relating to "Crown servant" from the Adaptation of Laws Bill 2001 and agreed to pursue the proposed amendments in the Law Amendment and Reform (Miscellaneous Provisions) Bill 2003. In response to the request of the Bills Committee, the Administration also agreed to set out "principal officials" expressly in the "prescribed officer" definition. The revised definition was circulated to the Bills Committee, and members did not raise any queries.

27. At its meeting on 13 December 2002, the Panel was briefed on the proposed amendments, and did not raise any queries.

Proposed amendments to Conveyancing and Property Ordinance (Cap. 219)

28. The Panel discussed problems concerning due execution of conveyancing documents by corporations raised by the Law Society at its meetings on 20 March, 24 June, 28 October and 13 December 2002 and 27 January 2003.

29. The relevant parties agreed that there was urgency to introduce legislative amendments to address the problems. The Panel discussed the legislative amendments which had jointly been drafted by the Law Society, the Bar Association and Hong Kong Conveyancing and Property Law Association Ltd, and an alternative proposal made by the Administration. At its meeting on 28 October 2002, the Panel urged the Administration to continue discussions with the relevant parties with a view to finalising the legislative amendments for introduction into LegCo in March 2003. Subsequent to a meeting with the relevant parties in November 2002, the Administration had modified its proposal.

30. At its meeting on 13 December 2002, the Panel was briefed on the proposed amendments. At the request of the Panel, the Administration provided the relevant provisions of the draft Bill for consideration of the Panel. At the meeting on 27 January 2003, the Law Society advised the Panel that it agreed in principle to accept the proposed amendments. The Panel considered that the matter had been satisfactorily resolved.

Proposed amendment to section 9AA of Legal Practitioners Ordinance (Cap. 159)

31. At its meeting on 13 December 2002, the Panel was briefed on the proposal to amend section 9AA of LPO to include an "officer" in the list of persons or entities which, in relation to misconduct, could be investigated, inquired into and dealt with under LPO. This would result in bringing any non-solicitor director appointed under the draft Solicitor Corporation Rules within the disciplinary authority of the Law Society.

32. At its meeting on 27 January 2003, the Panel expressed the view that the proposed amendment to section 9AA of LPO should not be introduced before the

Solicitor Corporation Rules had been made. Members agreed to request the Administration to take out the proposed amendment from the Bill, in order not to delay enactment of the Bill.

33. At the Panel meeting on 24 February 2003, the Administration assured members that further discussion as to whether there should be non-solicitor member directors of a solicitor corporation could take place when the draft Rules were submitted to the Panel for consideration. The Panel then raised no objection to the proposed amendment remaining in the Bill.

Other proposals in the Bill

34. The Panel was briefed on other proposals in the Bill, and did not raise any queries.

Enactment of the Bill

35. Members of the Panel considered that the Bill should be enacted as soon as possible, particularly the proposed amendments to the Conveyancing and Property Ordinance, as many property transactions had been held up due to the problems concerning execution of conveyancing documents by corporations.

Conclusion

36. No legal difficulties have been identified. The Legal Service Division has sought clarification on a number of drafting points and is studying the reply of the Administration. Upon the clarification of the few drafting points, the Bill should, subject to Members' views, be ready for the resumption of Second Reading debate.

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