

立法會
Legislative Council

LC Paper No. LS 84/02-03

**Paper for the House Committee Meeting
on 28 March 2003**

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

At the meeting of the House Committee last Friday, the Division reported that there were certain technical and drafting issues needed to be clarified and we were studying the reply of the Administration. We have since sought further clarification from the Administration and feel that the issues have been addressed. The correspondence exchanged with the Administration is attached for Members' perusal.

2. Subject to Members views, the Bill is ready for resumption of its Second Reading debate.

Encl

Prepared by

KAU Kin-wah
Assistant Legal Adviser
Legislative Council Secretariat
26 March 2003

律政司
法律政策科

香港金鐘道 66 號
金鐘道政府合署高座 1 樓

圖文傳真：852-2180 9928



DEPARTMENT OF JUSTICE
Legal Policy Division
1/F., High Block
Queensway Government Offices
66 Queensway, Hong Kong
Fax: 852-2180 9928

本司檔號 Our Ref.: LP 924/00C VI
來函檔號 Your Ref.: LS/B/18/02-03
電話號碼 Tel. No.: 2867 4903

Legislative Council Secretariat
Legal Service Division
(Attn : Mr. Kau Kin-wah)
Assistant Legal Adviser
Legislative Council Building
8 Jackson Road,
Central.

26 March 2003
By Fax (2877 5029)
& By Post

via Mr. Michael Scott, SASG

Dear Mr. Kau,

Law Amendment and Reform (Miscellaneous Provisions) Bill 2003

I refer to your letter of the 24th instant regarding the above Bill. Thank you for your comments, which have been given very serious consideration. Our response is set out below.

7&8. 《執業律師條例》

Housekeeping exercises of a similar nature to that under the Bill have been conducted frequently in recent years. We undertake to include the necessary amendments relating to the Chinese title of the Legal Practitioners Ordinance at the earliest opportunity available.

Inland Revenue Ordinance (Cap. 112) Section 88

We are of the view that the proposed addition of "慈善" before "信託" is not strictly necessary. Our present amendment "任何屬公共性質的慈善機構或信託" has already cured the syntactical misplacement hitherto created. The Chinese provision now rendered is an equivalent of the English original

both in terms of clarity and accuracy.

Mutual Legal Assistance in Criminal Matters Orders
Schedule 2, paragraph 1

The actual agreements signed between Hong Kong and the various countries are set out in Schedule 1 to each of the relevant Orders. The proposed amendments, however, only relate to Schedule 2 that specifies the modifications to Cap. 525 regarding the arrangements under each of the agreements. As the Chinese texts of the agreements are not being amended, no rectification of the signed agreements is required.

No doubt it is common ground that the agreements do not have direct force of law in Hong Kong. Instead, these agreements are implemented by local legislation. This is expressly provided in section 2 of each of the Orders. Section 2 states that "In relation to the arrangements for mutual legal assistance ... it is hereby directed that the Ordinance shall, subject to the modifications to the Ordinance summarized in Schedule 2, apply as between HKSAR and ...". The proposed amendments to Schedule 2, therefore, only affect the Chinese text of the local legislation implementing the agreements and do not affect the Chinese text of the agreements.

Chinese Version

Paragraph (a) of the definition of "prescribed officer" in s. 2(1) of both the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204).

We explained our stance in our previous reply dated March 19. It is also worth noting that, unlike other legislation where the Ordinances were initially enacted in English, and the Chinese texts were only subsequently prepared and declared authentic, the present amendments are done by way of bilingual drafting, not translation. Under the circumstances consistency is not the only criterion for judging whether a provision in Chinese is suitably and properly drafted. We are of the view that the current draft version reflects more accurately the policy intention and that such consideration is not outweighed by a requirement for consistency. The requirement for consistency is also reduced by the fact that the POBO and the ICACO have their own definition of "Crown servant/prescribed officer".

**Item 35(a)(ii) – Air Pollution Control (Specified Processes) Regulations
(Cap. 311 sub. leg. F), Second Schedule, Form 7**

The mistake proposed to be amended appears in the Chinese authentic text of the Air Pollution Control (Specified Processes) Regulations (Cap. 311 sub. leg. F) as originally published on page G2422 of L.N. (C) 53 of 1996 in Legal Supplement No. 7 to the Gazette (copy attached). It was discovered that this mistake had been unintentionally rectified by the printer in the course of re-typesetting the gazette version of the Chinese authentic text for publication in the Loose-leaf Edition of the Laws of Hong Kong. Formal amendment should still be made to rectify the mistake in the original Chinese authentic text.

Subject to your view, we would be grateful if you would accept the above reply as sufficiently taking into account the matters you have raised, thereby obviating any requirement to move CSAs and avoiding unnecessary delay of the enactment of the Bill. Please do not hesitate to let me know if any elaboration is required.

Yours sincerely,

Agnes Cheung
Senior Government Counsel
Legal Policy Division

LS/B/18/02-03
2869 9467
2877 5029

Secretary for Justice
Department of Justice
Legal Policy (General) Section
(Attn: Miss Agnes CHEUNG
Senior Government Counsel)
Rm 105, 1/F
High Block
Queensway Government Offices
66 Queensway
Hong Kong

By Fax (2180 9928) and By Post

24 March 2003

Dear Miss CHEUNG

Law Amendment and Reform (Miscellaneous Provisions) Bill 2003

I refer to your letter faxed to me on 19 March 2003.

Regarding the Administration's response, I have the following observations for your further consideration:-

7. & 8. 《執業律師條例》

Please let us know when will such housekeeping exercise be done. If it is not in the near future, please consider making Committee Stage Amendments to include all the provisions need to be amended in relation to the Chinese title of the Legal Practitioners Ordinance.

Inland Revenue Ordinance (Cap. 112) Section 88

Please add "慈善" before "信託" to avoid the misunderstanding that "trust of a public nature" is intended.

Mutual Legal Assistance in Criminal Matters Orders Schedule 2, paragraph 1

Consistency is not a reason for the intended amendment. The Orders are meant to reproduce the agreements signed between the SAR and the foreign countries. Please note that each Order states that the relevant agreement was "Done ... in Chinese and English, both text being equally authentic". If the original signed agreement is not rectified, there is no basis for any amendment as here proposed.

Chinese Version

Paragraph (a) of the definition of "prescribed Officer" in section 2(1) of both the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204)

"英皇香港政府轄下" is a rendering of "under the Crown in the right of Hong Kong Government". "Under the Government" should follow what has been rendered in Chinese in other existing Ordinances. Please maintain consistency in rendering the same expressions.

Further, it appears that the amendment proposed in item 35(a)(ii) of the Schedule to the Bill is not necessary because the printed version is in order. Only the on-line version has the mistake.

I would be grateful if you could let me have the Administration's reply together with the proposed Committee Stage Amendments before 26 March 2003, so that we may prepare the further report to the House Committee at its meeting on the coming Friday.

Yours sincerely

(KAU Kin-wah)
Assistant Legal Adviser

c.c. DoJ (Attn: Mrs Miranda NG, SALD)
LA

律政司
法律政策科

香港金鐘道 66 號
金鐘道政府合署高座 1 樓

圖文傳真：852-2180 9928



DEPARTMENT OF JUSTICE
Legal Policy Division

1/F., High Block
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Legislative Council Secretariat
Legal Service Division
(Attn : Mr. Kau Kin-wah)
Assistant Legal Adviser
Legislative Council Building
8 Jackson Road,
Central.

18 March, 2003
By Fax (2877 5029)
& By Post

via Mr. Michael Scott, SASG

Dear Mr. Kau,

Law Amendment and Reform (Miscellaneous Provisions) Bill 2003

I refer to your letter dated 17th instant regarding the captioned Bill.

Please find enclosed Schedule setting out the responses to your observations as set out in the Schedule attached to your letter.

Please do not hesitate to let me know if any elaboration is required.

Yours sincerely,

Agnes Cheung
Senior Government Counsel
Legal Policy Division

Schedule

Part 6 : Prevention of Bribery Ordinance (Cap. 201)

The reference to “Crown servant” in the Acceptance of Advantages (Governor’s Permission) Notice (now called “The Acceptance of Advantages (Chief Executive’s Permission) Notice”) will be amended administratively to read “prescribed officer” following the enactment of provisions to substitute “prescribed officer” for “Crown servant” under the Prevention of Bribery Ordinance in the current Bill. The Notice applies to prescribed officers, including government employees.

Schedule

1 Bankruptcy Ordinance (Cap. 6) s. 50(6)

The words "without more" in the English text are already reflected in "只憑" in the existing Chinese text.

7 & 8. 《執業律師條例》

We only have instructions to amend the references to 《執業律師條例》 appearing in Cap. 91 (and sub. leg. A) and Cap. 489 for the time being. We will deal with the remaining references in other legislation by another housekeeping exercise in the future.

Inland Revenue Ordinance (Cap. 112) s. 88

We were instructed that section 88 of the Inland Revenue Ordinance (Cap. 112) was intended to apply to any *charitable institution of a public nature* or any *charitable trust of a public nature* to reflect the long-standing public policy that recognized charities should be exempt from tax irrespective of the legal basis on which they are constituted. The modifier "屬公共性質的" ("of a public character"), as presently phrased in the Chinese authentic text would, firstly, exclude its application to "institution", and secondly, result in a possible alternative meaning that a public trust would be exempt from tax regardless of whether it is charitable or not. The latter unintended interpretation would be inconsistent with the provisions of the proviso to section 88. Amendment to the Chinese text is therefore proposed in order to reflect accurately the meaning of the English text and that the policy intent is not to exempt such "non-charitable" public trusts from tax.

Mutual Legal Assistance in Criminal Matters Orders Schedule 2, paragraph 1

The proposed amendments do not arise from the actual agreements between the HKSAR and the respective countries and the agreements do not contain the provisions

to be amended.

Instead, the proposed amendments mirror the amendments made to the Chinese text of section 5(1)(e) of Cap. 525 by item 87 of Schedule 2 to the Statute Law (Miscellaneous Provisions) Ordinance 2000 (32 of 2000). As paragraph 1 of Schedule 2 to these orders reproduces the wordings of section 5(1)(e) of Cap. 525, corresponding amendments should be made to these orders so that the related wordings in section 5(1)(e) of Cap. 525 and paragraph 1 of Schedule 2 to these orders are consistent with one another.

It should be noted that similar amendments have already been made to the Mutual Legal Assistance in Criminal Matters (Italy) Order (Cap. 525 sub. leg. G) and Mutual Legal Assistance in Criminal Matters (South Korea) Order (Cap. 525 sub. leg. H) by items 91 and 92 of Schedule 2 to the Statute Law (Miscellaneous Provisions) Ordinance 2000 (32 of 2000).

International Organization (Privileges and Immunities) Ordinance (Cap. 558) s. 14

Section 14 of Cap. 558 purports to make consequential amendments to the former Consular Relations Ordinance (Cap. 259), which was repealed by section 9 of the new Consular Relations Ordinance (Ord. No. 16 of 2000) (now Cap. 557). As such, the section is redundant and should be repealed.

Chinese version

Paragraph (a) of the definition of “prescribed Officer” in section 2(1) of both the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204)

We do not see any need for revising the rendition of “擔任政府轄下” to “在政府擔任”. In the current s. 2(1) of the Prevention of Bribery Ordinance (Cap. 201), the term “政府轄下” is similarly used in the existing definition of “官方僱員” the subject of one of the amendments in the present exercise. We have only opted to adopt one set of expression instead of some other as mentioned in your letter. It serves our purpose so long as the meaning it conveys is clear and accurate.

LS/B/18/02-03
2869 9467
2877 5029

Secretary for Justice
Department of Justice
Legal Policy (General) Section
(Attn: Miss Agnes CHEUNG
Senior Government Counsel)
Rm 105, 1/F
High Block
Queensway Government Offices
66 Queensway
Hong Kong

By Fax (2180 9928) and By Post

17 March 2003

Dear Miss CHEUNG

Law Amendment and Reform (Miscellaneous Provisions) Bill 2003

I am scrutinizing the above Bill with the view to advise Members on its legal and drafting aspects.

I have set out my observations on the Bill in the attached Schedule for your consideration.

I would be grateful if you could let me have the Administration's response before 20 March 2003, so that we may advise the House Committee on the coming Friday.

Yours sincerely

(KAU Kin-wah)
Assistant Legal Adviser

Encl. (2 pages)

c.c. DoJ (Attn: Mrs Miranda NG, SALD)
LA

Schedule

Part 6 Prevention of Bribery Ordinance (Cap. 201)

Please clarify whether the Acceptance of Advantages (Governor's Permission) Notice (Cap. 201 sub. leg.) is still applicable to government employees today. If yes, please clarify whether the references to "Crown servant" in it need to be amended.

Schedule

1. Bankruptcy Ordinance (Cap. 6) Section 50(6)

It appears that the words "without more" have not been rendered in the Chinese version. Please clarify whether amendment is necessary.

7. & 8. 《執業律師條例》

The above Chinese rendering of the "Legal Practitioners Ordinance" also appears in Cap. 6, 10, 11, 30, 31, 32, 47, 87, 92, 132, 163, 290, 313, 417, 418, 424, 426, 446, 451, 456, 484 and 493. Please clarify why no rectification is made to those provisions and only Cap 91 and its subsidiary legislation are selected in the present amendment exercise.

12. Inland Revenue Ordinance (Cap. 112) Section 88

Please clarify the basis for reading "of a public nature" as governing both "charitable institution" and "trust" and not merely "trust" in the context of section 88.

59. - 63. Mutual Legal Assistance in Criminal Matters Orders Schedule 2 Paragraph 1

Please clarify whether the to be rectified errors in the Chinese text stem from the printer or from the Chinese version of the actual agreements signed with the respective countries. If the latter is the case, please confirm that the respective counter-parties to those agreements have agreed to the rectification.

66. International Organizations (Privileges and Immunities) Ordinance (Cap. 558) Section 14

Please explain the reasons for repealing this provision.

Chinese Version

Paragraph (a) of the definition of "prescribed Officer" in section 2(1) of both the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204)

"Under the Government" is rendered here as "政府轄下". However, the same words are rendered as "在政府" in the definition of "public officer" in section 3(1) of the Interpretation and General Clauses Ordinance (Cap.1). The same rendering is made in paragraph (b) of the definition of "public officer" in section 2(1) of the Surviving Spouses' and Children's Pension Ordinance (Cap. 79). Please consider rendering as "

在政府擔任" instead of "擔任政府轄下".