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By fax: 2877 5029
18 May 2007

Mr Timothy Tso
Assistant Legal Adviser,
Legislative Council,
Legislative Council Building,
8 Jackson Road, Central,
Hong Kong.

via Mr Michael Scott, SASG/GLP

Dear Mr Tso,

Statute Law (Miscellaneous Provisions) Bill 2007 (the “Bill”)

I refer to your letter of 9 May 2007 addressed to Mr Michael Scott. Our response (which is in the same order as that in your letter) is set out below.

Part 3

Under Part 3 of the Bill, it is proposed to repeal the references to “ordre public” in the Societies Ordinance (Cap. 151) and the Public Order Ordinance (Cap. 245). Is it necessary to repeal the same reference in other ordinances, e.g. section 93(5) of the Patents Ordinance (Cap. 514) and section 7 of the Registered Designs Ordinance (Cap. 522)?

As set out in the paper presented to the Panel on Administration of Justice and Legal Services on the Bill for discussion at the Panel meeting on 27 November 2006, the contexts in which the term is used in other legislation are different from that of the Public Order Ordinance (Cap. 245) and Societies Ordinance (Cap. 151). Hence we consider that amendment to the Patents Ordinance (Cap. 514) and Registered Designs Ordinance (Cap. 522) is not required in the current exercise.

Clause 16

The proposed clause 16 adds a new subsection (5) to section 10II of the Criminal Procedure Ordinance (Cap. 221) to raise the maximum penalty for the offence of perverting the course of justice at common law. Would it be necessary to add the word “public” before “justice”? Is it more appropriate to use “an offence of doing an act (acts) tending and intended to pervert the course of public justice” instead of “an offence of perverting the course of justice”?

We consider "offence of perverting the course of justice at common law" is a proper way to describe the offence. The suggested additional words of "public" and "doing an act tending and intended to" in the description of the offence are not necessary. The term "perverting the course of justice" is generally used in the common law system. In fact, our legislation has consistently used the term "course of justice" (not "course of public justice") for a criminal offence in which someone acts in a manner that in some way prevents justice being served on either themselves or on a third party. You may find the term "course of justice" being used in sections 9D(2)(c), 9G(1)(c) and 65DA(3) of the Criminal Procedure Ordinance (Cap. 221) (i.e. the subject Ordinance under amendment), the Schedule to the Criminal Procedure (Record of Bail Proceedings) Rules (Cap. 2211), section 10(5)(a) of the Independent Commission Against Corruption Ordinance (Cap. 204), section 4(1) of the Judicial Proceedings (Regulation of Reports) Ordinance (Cap. 287), Schedule 1 to the Organized and Serious Crimes Ordinance (Cap. 455), Schedule 1 to the Fugitive Offenders Ordinance (Cap. 503) and the respective Schedules to the various subsidiary legislation made under Cap. 503, and section 16 of the Schedule to the International Organizations (Privileges and Immunities) (World Trade Organization) Order (Cap. 558B).

On the other hand, the term "course of public justice" is actually used in a different context in the Hong Kong legislation. At present, the term is only used in the Hong Kong Reunification Ordinance (Cap. 2601) - in the Long Title and s.10(1) of Part VI. The term is used in relation to certain important principles behind the legal system in Hong Kong.

Clause 22

What is the meaning of “fearless advocacy” under the proposed new section 18(3) of the Costs in Criminal Cases Ordinance (Cap. 492)? Would it be more appropriate to use “對抗式”, “爭辯式” or “抗辯式” instead of “辯論式” in the Chinese text (as the rendition of “adversarial”) of the proposed new section 18(3) of the Costs in Criminal Cases Ordinance (Cap. 492)?

The term 'fearless advocacy' in Clause 22 of the Bill came from the Bar Association. We would attach the literal meaning to it.

In relation to the rendition of "adversarial" in Clause 22, "辯論式" is used in (i) the English-Chinese Glossary of Civil and Commercial Law Terms published by DOJ, (ii) 中國大百科全書 and (iii) 英漢法律辭典 published by 法律出版社. "辯論" means "彼此用一定的理由來說明自己對事物或問題的見解，揭露對方的矛盾，以便最後得到正確的認識或共同的意見。". The other renditions proposed (please see their meanings below) are not as appropriate as "辯論式".

We have however done further research and found that "對辯式" is being used in the PRC, Taiwan and Hong Kong (see LegCo papers CB(2) 429/06-07(03) para. 23 and CB(2)887/06-07 para. 26). For the sake of consistency, We propose that we change the rendition for "adversarial" from "辯論式" to "對辯式".

"對抗" means "對立起來相持不下".

"爭辯" means "爭論"

"抗辯" means "不接受責難而作辯護"

The meanings are extracted from 現代漢語辭典.

Part 13 – Division 2

In the proposed clauses 56(1)(c)(ii) and 56(2)(c)(ii), the reference to the web site of the Treasury is amended from "<http://www.info.gov.hk/tsy>" to "<http://www.try.gov.hk>". Is it necessary to amend the reference to that web site in other provisions mentioned in Division 2 of Part 13 of the Bill (e.g. in paragraph 1(c) of the Payment Instructions in Form 1 of the Schedule of the Fixed Penalty (Traffic Contraventions) Regulations (Cap. 237 sub. Leg. A))?

Both URL addresses "<http://www.info.gov.hk/tsy>" and "<http://www.try.gov.hk>" lead to the website of the Treasury. The website address of the Treasury is provided in the Forms in the legislation mentioned in Division 2 of Part 13 for the purpose of informing the public that details regarding payment through the internet could be obtained from that website.

Although an individual Bureau may decide to adopt the primary version of the Treasury's website address, the provision of either of the above addresses in the Forms will not affect the public in obtaining information from the Treasury's website, and will not lead to any interpretation issues in law. We are of the view

that it is not necessary to amend the other provisions mentioned in Division 2 of Part 13."

With best regards,

Yours sincerely,

(Ms Stella Chan)
Government Counsel
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