

立法會
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**Paper for the Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2007**

At its meeting on 24 September 2007, the Bills Committee requested the Legal Adviser to the Bills Committee to provide a list of references to “*ordre public*” in the Laws of Hong Kong.

2. Members may recall that part of the Bill concerns amendments to references to “*ordre public*” in the Societies Ordinance (Cap. 151) and the Public Order Ordinance (Cap. 245) (Part 3 of the Bill). The provisions referred to in the two Ordinances are as follows:-

- (a) Societies Ordinance (Cap. 151), sections 2(4), 5A(3)(a), 5D(1)(a), 8(1)(a) and 32; and
- (b) Public Order Ordinance (Cap. 245), sections 2(2), 6(1) and (2), 9(1) and (4), 11(2), 14(1) and (5), and 15(2).

3. Apart from the Societies Ordinance and Public Order Ordinance, references to “*ordre public*” in other ordinances (but not included in Part 3 of the Bill) are found in the following legislation :-

- (a) the Schedule to the Specification of Arrangements (Government of the Kingdom of Belgium) (Avoidance of Double Taxation on Income and Capital and Prevention of Fiscal Evasion) Order (Cap. 112 sub. leg. AJ) (Agreement between the Hong Kong Special Administrative Region of the People’s Republic of China and the Kingdom of Belgium for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital), the relevant part of Article 25(2) of the Schedule is extracted for members’ easy reference :-

“2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting Party the obligation:

- (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting Party;

(b) to supply information which is not obtainable under the laws in force in either Contracting Party or in the normal course of the administration of either Party;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).”;

- (b) the Schedule to the Specification of Arrangements (Government of the Kingdom of Thailand) (Avoidance of Double Taxation on Income and Prevention of Fiscal Evasion) Order (Cap. 112 sub. leg. AX) (Agreement between the Government of the Hong Kong Special Administrative Region of the People’s Republic of China and the Government of the Kingdom of Thailand for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income), the relevant part of Article 25(2) of the Schedule is extracted for members’ easy reference :-

“2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting Party the obligation:

(a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting Party;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).”;

- (c) section 8 of the Hong Kong Bill of Rights Ordinance (Cap. 383) (Hong Kong Bill of Rights), the relevant parts are extracted for members’ easy reference :-

“Article 8 – Liberty of movement

(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in this Bill of Rights.

Article 10 - Equality before courts and right to fair and public hearing

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent,

independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

Article 16 - Freedom of opinion and expression

(3) The exercise of the rights provided for in paragraph (2) of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary-

- (a) for respect of the rights or reputations of others; or
- (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 17 - Right of peaceful assembly

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 18 - Freedom of association

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”;

- (d) Schedule 1 to the Merchant Shipping (Liner Conferences) Ordinance (Cap. 482) (Convention on a Code of Conduct for Liner Conferences), the relevant part of Article 39(2) of the Schedule is extracted for members' easy reference :-

“(2) A recommendation shall not be recognized and enforced at the request of a party referred to in Article 39(1) only if the court or other competent authority of the country where recognition and enforcement is sought is satisfied that-

- (a) any party which accepted the recommendation was, under the law applicable to it, under some legal incapacity at the time of acceptance;
- (b) fraud or coercion has been used in the making of the recommendation;
- (c) the recommendation is contrary to public policy (*ordre public*) in the country of enforcement; or
- (d) the composition of the conciliators, or the conciliation procedure, was not in accordance with the provisions of this Code.”;

- (e) the Schedule to the Fugitive Offenders (Drugs) Order (Cap. 503 sub. leg. J) (United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances), the relevant part of Article 7(15) of the Schedule is extracted for members’ easy reference :-

“15. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;
- (b) If the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;
- (c) If the authorities of the requested Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or proceedings under their own jurisdiction;
- (d) If it would be contrary to the legal system of the requested Party relating to mutual legal assistance for the request to be granted.”;

- (f) sections 49(3) and 93(5) of the Patents Ordinance (Cap. 514) (Registrar’s power to revoke patent on grounds of “*ordre public*” or morality), the relevant parts of the said sections are extracted for members’ easy reference :-

“Section 49 - Registrar's power to revoke patent on grounds of "*ordre public*" or morality

- (3) If the Registrar or the court determines that the invention is not a patentable invention by reason of any of the matters specified in section 93(5) he or it shall order that the patent shall be revoked and upon the making of such an order the patent shall be treated as never having had effect;

Section 93 - Patentable inventions

(5) An invention the publication or working of which would be contrary to public order ("*ordre public*") or morality shall not be a patentable invention; however, the working of an invention shall not be deemed to be so contrary merely because it is prohibited by any law in force in Hong Kong.”;

- (g) section 41 of the Patents (General) Rules (Cap. 514 sub. leg. C) (Registrar’s power to revoke patent on grounds of “*ordre public*” or morality under section 49 of the Ordinance), the relevant part of the section is extracted for members’ easy reference :-

“Section 41 - Registrar's power to revoke patent on grounds of "*ordre public*" or morality under section 49 of the Ordinance

(1) A reference under section 49(1) of the Ordinance to the Registrar of the question as to whether an invention is a patentable invention having regard to any of the matters specified in section 93(5) of the Ordinance shall-

- (a) be in the specified form;
- (b) be accompanied by a statement setting out fully the reference sought and the facts upon which the person making the reference ("the applicant") relies; and
- (c) be accompanied by the prescribed fee.”;

- (h) sections 7 and 44 of the Registered Designs Ordinance (Cap. 522) (Designs contrary to public order (“*ordre public*”) or morality are not registerable), the relevant parts of the said sections are extracted for members’ easy reference :-

“Section 7 - Designs contrary to public order ("*ordre public*") or morality are not registerable

(1) Subject to subsection (2), a design the publication or use of which would be contrary to public order ("*ordre public*") or morality is not registerable.

(2) The publication or use of a design shall not be considered to be contrary to public order ("*ordre public*") merely because it is prohibited by any law in force in Hong Kong.

Section 44 - Revocation on ground of public order ("*ordre public*") or morality

(1) Any person may at any time after a design has been registered under this Ordinance refer to the Registrar the question of whether, having regard to section 7, the design is a registerable design.

(4) If the Registrar or the court determines that the design is not a registerable design under section 7, he or it shall order the registration of the design to be revoked.”; and

- (i) Schedule 1 to the Mutual Legal Assistance in Criminal Matters (United States of America) Order (Cap. 525 sub. leg. F) (Agreement between the Government of Hong Kong and the Government of the United States of America on Mutual Legal Assistance in Criminal Matters), the relevant part of Article 3(1) of Schedule 1 is extracted for members' easy reference :-

“Article 3 - Limitations on Providing Assistance

- (1) The Central Authority of the Requested Party shall refuse assistance if:
- (a) the request for assistance impairs the sovereignty, security, or public order (*ordre public*) of the United States of America or, in the case of Hong Kong, the sovereign government responsible for the foreign affairs relating to Hong Kong;
 - (b) it is of the opinion that the granting of the request would impair the Requested Party's essential interests;
 - (c) it is of the opinion that the request for assistance relates to a political offence or that there are substantial grounds for believing the request was made for the purpose of prosecuting, punishing, or otherwise proceeding against a person on account of the person's race, religion, nationality, or political opinions; or
 - (d) it is of the opinion that the acts or omissions alleged to constitute the criminal offence would not have constituted a criminal offence if they had taken place within the jurisdiction of the Requested Party, or, irrespective of whether they would have done so, would not constitute in the Requesting Party an offence within any of the descriptions in the Annex to this Agreement.”.

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