

立法會
Legislative Council

LC Paper No. CB(2)1607/07-08

Ref : CB2/BC/8/06

Paper for the House Committee meeting on 18 April 2008

**Report of the Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2007**

Purpose

This paper reports on the deliberations of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007.

The Bills Committee

2. At the House Committee meeting on 27 April 2007, Members agreed to form a Bills Committee to study the Bill. The membership of the Bills Committee is in **Appendix I**.

3. Under the chairmanship of Hon Margaret NG, the Bills Committee held eight meetings including seven with the Administration. The Bills Committee has met with six organizations and one individual to receive views on the Bill. The Bills Committee has also received written submissions from two other organizations. The names of these organizations and individuals are listed in **Appendix II**.

The Bill

4. The Bill is an omnibus bill which seeks to make miscellaneous amendments to various ordinances for the purpose of improving, clarifying and updating the law and rectifying textual errors and omissions of consequential amendments as a result of revision of various ordinances.

5. The Bill comprises 14 Parts and 79 clauses. Part 1 contains the preliminary provisions. The amendments are grouped under the remaining 13 Parts with the following themes –

- (a) Part 2 – amendment relating to a bankrupt's obligation to notify the trustee when leaving Hong Kong;
- (b) Part 3 – amendments to references to "*ordre public*" in the Societies Ordinance (Cap. 151) and the Public Order Ordinance (Cap. 245);
- (c) Part 4 – amendments relating to suicide of another person;
- (d) Part 5 – amendments relating to penalty for perverting the course of justice at common law;
- (e) Part 6 – amendments relating to power of magistrate to award costs;
- (f) Part 7 – amendments relating to wasted costs in criminal proceedings;
- (g) Part 8 – amendments to provisions providing that the decision of the Court of First Instance on an appeal is final;
- (h) Part 9 – amendments consequential to the Rules of the High Court (Amendment) Rules 2000 (L.N. 129 of 2000) in relation to the time for serving notice of motion of appeal;
- (i) Part 10 – amendments relating to the Legal Practitioners Ordinance (Cap. 159);
- (j) Part 11 – amendments to remove certain minor inconsistencies between the English and Chinese texts of the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204);
- (k) Part 12 – amendments relating to new powers to substitute dates and titles of subsidiary legislation;
- (l) Part 13 – minor and technical amendments to various ordinances; and
- (m) Part 14 – amendments to achieve internal consistency and consistency between the English and Chinese texts of various ordinances.

Deliberations of the Bills Committee

Part 2 – amendment relating to a bankrupt's obligation to notify the trustee when leaving Hong Kong
(clause 3)

6. Part 2 of the Bill proposes to repeal section 30A(10)(b)(i) of the Bankruptcy Ordinance (BO) (Cap. 6) to exonerate a bankrupt from his obligation to notify the trustee of bankruptcy of his temporary departure from Hong Kong. The amendment is included in the Bill following the Court of Final Appeal (CFA)'s ruling on 20 July 2006 that section 30A(10)(b)(i) of BO was unconstitutional on grounds of being unreasonably restrictive of the right to travel guaranteed under Article 31 of the Basic Law and Article 8(2) of the Hong Kong Bill of Rights. The effect of the CFA judgment is that section 30A(10)(b)(i) is considered void from the outset.

7. Noting that the relevant period for a bankrupt to be discharged from bankruptcy will cease to run during the period he is absent from Hong Kong and until he notifies the trustee of his return, members have enquired about the impact of the proposed deletion of section 30A(10)(b)(i) on the calculation of the relevant period and how the mechanism for a bankrupt to notify the trustee of his itinerary when leaving Hong Kong will operate after passage of the Bill.

8. The Administration has advised that section 30A(10)(b)(i) does not impose on a bankrupt an express duty to notify the trustee of his itinerary and where he can be contacted. The provision provides that a bankrupt needs to notify his trustee of his itinerary and where he can be contacted, if he intends to leave Hong Kong for whatever period; failing which his period of bankruptcy will cease to run until the bankrupt physically returns to Hong Kong and notifies the trustee of his return. The Administration has pointed out that leaving section 30A(10)(b)(i) aside, when the bankrupt fails to notify the trustee of his departure and return, the trustee or any creditor may object to the discharge of a bankrupt at the expiration of the relevant period in the light of the considerations stipulated in section 30A(4). It is the obligation of the bankrupt to co-operate in the administration of his estate, and hence provide the trustee with his contact details, such as phone number, irrespective of whether the bankrupt is outside Hong Kong.

9. Under section 30A(10)(b)(ii) of BO, a bankrupt is obliged to notify the trustee of his return. Members consider that should the bankrupt be exonerated from his obligation to notify the trustee of bankruptcy of his temporary departure from Hong Kong, it is an anomaly for the bankrupt to notify the trustee of his return. Members question whether section 30A(10)(b)(ii) should be amended in the light of the proposed deletion of section 30A(10)(b)(i). The Administration agrees that the wording of section 30A(10)(b)(ii) can be reviewed consequent to the deletion of section

30A(10)(b)(i). However, the consequential amendment would fall outside the scope of the Bill which seeks merely to tidy up the statute book in the light of the CFA judgment.

10. Subsequently, the Administration has advised that it is in the process of reviewing section 30A(10)(b)(ii) in the light of the CFA judgment. The Administration intends to review the "abscondee" regime as a whole (i.e. bankrupts who leave Hong Kong and cannot be contacted) under BO, and consider whether there is a need to amend any other provision(s) in BO. Taking into account the policy content involved in the review, and the fact that more time will be needed to study the issue and to conduct necessary research into relevant developments in other common law jurisdictions and consultations where appropriate, the Administration is of the view that it is not appropriate or possible to include legislative amendment proposals with respect to the "abscondee" regime as a whole in the Bill. Any proposed legislative amendments to the "abscondee" regime should be taken forward in a separate exercise. The Administration proposes to withdraw Part 2 of the Bill by moving a Committee Stage amendment (CSA).

11. Although members support the Administration's proposal to withdraw Part 2 of the Bill, they are concerned about the timeframe for introducing the proposed legislative amendments to the "abscondee" regime and whether public consultation will be conducted. The Bills Committee agrees that the issue should be referred to the Panel on Financial Affairs for follow up.

Part 3 – amendments to references to "*ordre public*" in the Societies Ordinance (Cap. 151) and the Public Order Ordinance (Cap. 245)
(clauses 4 to 14)

12. Part 3 of the Bill proposes to repeal the references to "*ordre public*" in the Societies Ordinance (SO) and the Public Order Ordinance (POO) to give effect to the judgment of CFA in the case of *LEUNG Kwok-hung and others v HKSAR* (FACC Nos. 1 & 2 of 2005) (the case). In that case, CFA held that the discretion of the Commissioner of Police (the Commissioner) under POO to restrict the right of peaceful assembly for the statutory purpose of "public order (*ordre public*)" does not give an adequate indication of the scope of that discretion. Accordingly, CFA held that the Commissioner's discretion in relation to the purpose of "public order (*ordre public*)" in sections 14(1), 14(5) and 15(2) of POO is unconstitutional and that the appropriate remedy is the severance of "public order" in the law and order sense from "public order (*ordre public*)" in those provisions. In the judgment, it was also stated that after severance, the Commissioner's discretion in relation to public order satisfies the constitutional requirements of "prescribed by law" and necessity and is constitutional.

13. Most members express concern that the proposed amendments are not merely textual amendments, but involve changes in policy. They also question whether the Administration's proposed repeal of references to "*ordre public*" in POO can bring the Ordinance into conformity with the CFA judgment in the case. These members consider that the Administration has simplified the CFA judgment into a matter of merely replacing the term "public order (*ordre public*)" in POO with the term "public order". They are of the view that the Administration should instead examine how the provisions can be improved so that the Police and members of the public will be aware of the scope of the Police's power. Some members raise concern as to whether the proposed deletion of references to "*ordre public*" from POO and SO is in breach of Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and Article 17 of the Hong Kong Bill of Rights concerning the right of peaceful assembly.

14. The Bills Committee has received public views on the proposed amendments to POO. The Hong Kong Bar Association and the Law Society of Hong Kong are of the view that the proposed amendments are in line with the CFA's judgment in the case, and they have no objections to the amendments. The other deputations, however, consider that the right to peaceful assembly and demonstration should be clearly defined and better protected under the existing legal framework, and the Administration should take the opportunity to review the relevant provisions in POO. They suggest that the Bills Committee should consider deleting the proposed amendments in Part 3 of the Bill, if the Administration does not agree to conduct a comprehensive review of POO.

15. The Administration has pointed out to the Bills Committee that the proposed amendments to POO and SO seek to bring the terms used in these Ordinances into conformity with the CFA's judgment in the case. As explained in the CFA's judgment, the concept of "public order" means "public order in the law and order sense, that is the maintenance of public order and prevention of public disorder"; the concept of "public order (*ordre public*)" includes public order in the law and order sense but is not so limited. CFA finds that it is an imprecise and elusive concept, and its boundaries cannot be precisely defined. In gist, CFA considers the term "public order", which covers "the maintenance of public order and prevention of public disorder", to be sufficiently certain to satisfy the constitutional requirement of "prescribed by law". According to the Administration, the explanation as set out in the CFA judgment is now part of the case law and is applicable to relevant legislation, i.e. POO and SO.

16. On the concern about the right to peaceful assembly and demonstration, the Administration has pointed out that most of the suggestions put forward by the deputations have been deliberated in the past and the Administration's position has been made clear at various forums including the debate on POO at

the Legislative Council meeting on 20 December 2000. The Administration has advised that notification under POO is required to enable the Police to fulfil its duty on the part of the Government to take reasonable and appropriate measures to enable lawful assemblies and demonstrations to take place peacefully. The power of the Commissioner to object to a procession is provided for in section 14 of POO. But this power is subject to section 14(3), which prescribes time limits within which he must notify the organizers of his decision. There are further safeguards in sections 9 and 14 of POO, which provide that the Commissioner may only prohibit a public meeting or object to a public procession if he reasonably considers that the prohibition or objection is necessary in the interests of national security or public safety, public order or the protection of the rights and freedoms of others. The decisions of the Commissioner are subject to appeal to the Appeal Board on Public Meetings and Processions.

17. At the operational level, the Administration has advised that it has issued "Guidelines on the approach to the Public Order Ordinance in relation to public meetings and public processions", and has incorporated the explanation in the CFA judgment into the Guidelines for reference by frontline police officers and members of the public. The guidelines explain the meaning of many important terms in POO, and are available on the Police's website and in Divisional Police Report Rooms for inspection. According to the Administration, the concept of "public order (*ordre public*)" has never been a matter at issue among all the cases considered by the Appeal Board on Public Meetings and Processions since 1997. The Administration has further advised that by deleting the reference to "*(ordre public)*" from the English text, the citizens' right to peaceful assembly is enhanced since the Commissioner's discretionary power is by law limited to public order in the law and order sense. The proposal would in no way affect the rights to assembly and demonstration currently enjoyed by the people of Hong Kong.

18. The Administration has pointed out to the Bills Committee that at the constitutional level, Article 27 of the Basic Law guarantees the freedom of association, of assembly, of procession and of demonstration. Article 17 of the Hong Kong Bill of Rights gives domestic effect to the provisions of Article 21 of ICCPR. The provisions of POO in respect of the right to assembly are specifically framed with a view to conformity with Article 21 of ICCPR. All decisions made under POO are subject to the Basic Law, Article 39 of which enshrines the provisions of ICCPR as applied to Hong Kong.

19. The Administration has reiterated that since the handing down of the CFA's judgment on 8 July 2005, in the relevant sections of POO and SO, the term "public order (*ordre public*)" has been taken to mean "public order" in the law and order sense. This accords with what the Police had been doing in practice anyway prior to the judgment. The deletion of the reference to "*(ordre public)*" does not have any substantive effect on Police operations in

practice, including the processing of notification of public meetings and processions under POO.

20. According to the Administration, it has kept POO under review and does not consider that it requires any major amendments at the moment. A comprehensive review of POO would be outside the scope of the Bill. The Administration stresses that the proposed amendments included in the Bill merely seek to bring the statute book in conformity with the law in force.

21. Most members are of the view that the Administration's response fails to sever the concept of "public order" (in law and order sense) from "public order (*ordre public*)" in the light of the CFA judgment. Given that the Administration has stated its position in not making any amendment to the Bill in this respect, the Bills Committee has held an internal discussion on whether it should propose amendments to the Bill. The legal adviser to the Bills Committee has pointed out that as a matter of law, the term "*ordre public*" in sections 14(1), 14(5) and 15(2) of POO is invalid and void after the handing down of the CFA's judgment. Thus, there would be no effect in law even if they remain in the statute book in case Part 3 of the Bill is not passed. In respect of other provisions of the POO and the SO included in the proposed amendments in Part 3 of the Bill, they would remain valid as they were not involved in the CFA's case. Thus, the term "*ordre public*" in those provisions would still be valid under the existing law if Part 3 of the Bill was not passed in this exercise, although they might be similarly held to be unconstitutional by a court if a case arises. Members also note that references to "*ordre public*" are found in other ordinances, and any amendments proposed to the term "*ordre public*" in POO may give rise to the question of consistency of the term being used in the Laws of Hong Kong.

22. After a thorough and careful consideration of the Administration's proposed amendments under Part 3 of the Bill and the effect of not passing them, a majority of members has reservation about the proposed amendments. The Chairman has suggested that, instead of proposing amendments to the Bill, members may consider not to pass the proposed amendments under Part 3 of the Bill, and make a request during the resumption of Second Reading debate on the Bill for the Administration to conduct a comprehensive review of POO. Members of the Bills Committee, with the exception of Mr LI Kwok-ying, support the proposal. Mr LI Kwok-ying expresses concern about the impact on the regulation of public meetings and processions by the Police if the proposed amendments in Part 3 of the Bill are not passed.

23. Responding to the Bills Committee's proposal, the Administration has advised that its considered view is that the proposed amendments in Part 3 of the Bill should be taken forward in the interest of clarity. With the proposed amendments to POO, the relevant provisions of the statute book would fully conform with the CFA's ruling in respect of the term "public order (*ordre*

public)". It does not consider that the conduct of a comprehensive review of POO should become a pre-requisite for proceeding with the current legislative amendment exercise.

24. The Bills Committee has decided that a CSA should be moved by the Bills Committee to delete the proposed amendments under Part 3 of the Bill.

Part 4 – amendments relating to suicide of another person
(clause 15)

25. The Bills Committee notes that under section 5(1) of the Homicide Ordinance (Cap. 339), it shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or to be a party to the other killing himself or being killed by another person. However, the crime of suicide or self-murder was abolished in 1967 by the enactment of section 33A of the Offences against the Person Ordinance (Cap. 212). Section 33B of the Offences against the Persons Ordinance makes it clear that being a party to another person's suicide is no longer murder but is the new statutory offence of "complicity in another's suicide" which carries a maximum penalty of 14 years' imprisonment.

26. To reflect the abolition of the offence of suicide, the Administration proposes to introduce amendments to repeal the words "killing himself or" from section 5(1) and (2) of the Homicide Ordinance.

Part 5 – amendments relating to penalty for perverting the course of justice at common law
(clause 16)

27. Perverting the course of justice is an indictable offence at common law. Punishment for the offence is subject to the limits provided under section 101I of the Criminal Procedure Ordinance (CPO) (Cap. 221) which states that "where a person is convicted of an offence which is an indictable offence and for which no penalty is otherwise provided by any Ordinance, he shall be liable to imprisonment for 7 years and a fine".

28. The Administration has explained that in the case of the *Secretary for Justice v Wong Kwok-kau [2004] 3 HKLRD 208*, the Court of Appeal invited the Administration to take note of its concern that the maximum sentencing limit of seven years for the offence of perverting of course of public justice had been set too low. To address the concern expressed, the Administration proposes to add a new subsection (5) to section 101I of CPO so as to remove the limit for the maximum period of imprisonment of seven years for the offence of perverting the course of justice at common law, and to provide for such an offence to be punishable by fine and imprisonment at the discretion of the court.

29. In response to the enquiry of the legal adviser to the Bills Committee as to whether it is more appropriate to use "an offence of doing an act (acts) tending and intended to pervert the course of public justice" in the description of the offence, the Administration has advised that the term "perverting the course of justice" is generally used in the common law system. As a matter of fact, the local 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 himself or on a third party. The Administration considers "offence of perverting the course of justice at common law" a proper way to describe the offence.

30. While the Bills Committee has no objection to the proposed amendments, the Chairman considers that the amendments are not merely technical amendments as the proposal involves changes in policy.

Part 6 – amendments relating to power of magistrate to award costs
(clauses 17 to 20)

31. Section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) provides that where a person has not paid a fixed penalty or notified the Commissioner of Police that he wishes to dispute liability, a magistrate shall order him to pay the fixed penalty together with an additional penalty equal to the amount of the fixed penalty.

32. The Administration has advised that there is, at present, no provision empowering magistrates to order costs in such proceedings. It is necessary to empower magistrates to make orders for costs under section 3A of the Fixed Penalty (Criminal Proceedings) Ordinance. The proposed amendments seek to amend section 3A and 3B of the Ordinance to this effect. Consequential amendments are also made to sections 10 and 10A of the Ordinance.

Part 7 – amendments relating to wasted costs in criminal proceedings
(clauses 21 and 22)

33. The Administration has explained that having regard to the comments made by the Court of Appeal in a number of decided cases, it proposes to amend section 2 of the Costs in Criminal Cases Ordinance (CCCO) (Cap. 492) to enable the court in criminal cases to order the legal or other representatives of a party to bear any costs incurred by another party to the same proceedings as a result of the improper or unreasonable act or omission, or undue delay or any other misconduct or default on their part. Section 2 of CCCO currently limits the court's jurisdiction to award costs in criminal cases to occasions when the legal or other representatives "fail to appear or are late". Section 18 of CCCO is also proposed to be amended to provide that the court or the judge

shall take into account the interest of fearless advocacy under the adversarial system of justice when determining whether to make such an order.

34. According to the Administration, the proposal is supported by the Judiciary. The Bills Committee has received public views and submissions regarding the proposed amendments under Part 7 of the Bill. The Consumer Council and the Legal Aid Department support the proposal in principle. The Bar Association and the Law Society oppose to the proposed wasted costs provisions and hold the view that the proposed amendments in Part 7 of the Bill should not proceed at all. They are deeply concerned that the proposed definition of "wasted costs" under Part 7 will expand substantially the circumstances to impose wasted costs orders. Given that the procedural regimes in civil and criminal proceedings are fundamentally different, the justifications put forward by the Administration for the proposed amendments by reliance upon the corresponding sections of the civil wasted costs regime are inapt. The wasted costs provisions may pose an inhibitive effect on a legal representative in the conduct of the defence case which would be detrimental to a defendant. The Bar Association has also pointed out that the legal professional bodies have put in place codes of conduct (i.e. Bar's Code of Conduct and the Hong Kong Solicitor's Guide to Professional Conduct) and disciplinary mechanisms to deal with professional misconduct which serve as an effective deterrent against the lack of professionalism that the Court of Appeal has highlighted in two of the three cases. The concerns are shared by most members of the Bills Committee and the Law Society.

35. The Bar Association has subsequently put forward an alternative position on 20 September 2007 which proposes that a wasted costs order would be issued as a result of any serious improper act or omission; or any undue delay or any other misconduct on the part of any representative or any employee of a representative. The proposed wording provides a tighter definition of wasted costs, and maintains the purpose of deterring extremely deficient work as highlighted by the Court of Appeal. The Bar Association also proposes to extend the application of Part 7 to all counsel appearing on behalf of the Government or the legal aid fund to be borne by the general revenue, to uphold the principle of equality between private practitioners and public officers in the employ of the Government. The Law Society has vide its letter dated 10 October 2007 indicated its support for the Bar Association's proposals. The Chairman has asked the Administration to review the proposals and discuss with the Bar Association as appropriate.

36. The Administration has reverted to the Bills Committee and advised that its position on the wasted costs provisions is unchanged. Regarding the Bar Association's primary position of withdrawing Part 7, the Administration considers the disciplinary processes of the Bar Association inadequate to deal with cases of misconduct that are within the meaning of "wasted costs" under Part 7 of the Bill. In addition, the Bar's Code of Conduct does not support a

stark distinction between the duties of barristers in civil and criminal proceedings.

37. Regarding the Bar Association's alternative proposal to limit the circumstances in which wasted costs orders apply, the Administration is of the view that the proposed addition of "serious" or deletion of "unreasonable" and "default" is unnecessary. Having regard to cases such as *Harley v McDonald* [2002] 2 AC 678 and *Ridehalgh v Horsefield* [1994] Ch 205, the case law has made it clear that making a wasted costs order is an exceptional step the court will take. If the legal representative's act is unreasonable, the improper act must be sufficiently serious. On the contrary, the Bar Association's proposal will limit the court's discretion to make the wasted costs orders.

38. The Administration has advised that the wording of the wasted costs provisions is modelled largely on the Prosecution of Offences Act 1985 in the United Kingdom (UK). The Bills Committee notes that negligent act or omission is included in the definition of "wasted costs" in section 19A of the Prosecution of Offences Act 1985, but is not included in the definition of "wasted costs" in the proposed amendments under Part 7 of the Bill. On the other hand, "any undue delay or any other misconduct or default" (included in the definition of "wasted costs" in Part 7 of the Bill) is not included in the UK equivalent. According to the Administration, negligent act is not included in the definition of "wasted costs" in Part 7 of the Bill upon the suggestion of the Bar Association, and the purpose of including "any undue delay or any other misconduct or default" in the definition of "wasted costs" is to maintain consistency with similar provisions in the Rules of the High Court.

39. The legal adviser to the Bills Committee has pointed out that there is no appeal mechanism in respect of costs orders made by the Court of Appeal under section 19(3) of CCCO, and there is no express provision empowering the appellate court to make an order as to the costs of the appeal under section 19(4) of CCCO.

40. In response to the concern about the inequity arising from the difference in treatment in respect of lawyers in private practice and Government lawyers as the former will be personally liable to payment of costs under a wasted costs order, while the costs incurred by the latter are funded by public money, the Administration has pointed out that the subject matter is separate from the scope of the definition of "wasted costs" in section 2 of CCCO. The purpose of this section is to provide a fund out of which the costs of the other party shall be paid. It is an avoidance of doubt provision to ensure that the costs must be met from the general revenue. However, that would be without prejudice to any steps that the Government takes to recover the sum involved.

41. In view of the strong misgiving about the effect on fearless advocacy in criminal practice as expressed by the Bar Association and the Law Society, some members question the need for enacting the wasted costs provisions. Members consider that the paramount concern is whether the opposition against the wasted costs provisions is made on justifiable grounds and whether the wasted costs provisions are conducive to public interest in the administration of justice. Most members are concerned that the proposed wasted costs provisions may deter legal practitioners, especially the less experienced who usually appear in the magistrates court, from fearlessly presenting the case in ways which they consider to be in the best interests of their clients. The opposition against the wasted costs provisions should not be seen as for protecting the interests of the legal profession. Members note that similar concerns had been raised when the wasted costs provisions contained in the Costs in Criminal Cases Bill were considered by the Legislative Council in 1996. In view of this, the Bills Committee has agreed that it will move a CSA to delete the proposed amendments under Part 7 of the Bill.

42. The Administration has subsequently advised the Bills Committee that it has given further consideration to the submissions of the Bar Association and the Law Society. Although the Administration cannot accept the Bar Association's primary position that amendments to CCCO are unnecessary, it has noted in particular the submission that the responsibilities of legal representatives in civil and criminal proceedings are significantly different and that the wasted costs provisions in each type of proceedings should be tailored to reflect that difference. In the circumstances, the Administration proposes to move amendments to Part 7 of the Bill to reflect the Bar Association's alternative position on the definition of "wasted costs". According to the Administration, the amendments would make it clear that for the wasted costs jurisdiction to be invoked, it would be necessary for the act or omission of the legal representative to be "seriously improper" or for there to have been undue delay or any other misconduct on the part of the representative or employee of a representative. The Law Society has advised the Bills Committee by its letter dated 11 April 2008 that it does not think the Administration's proposed CSAs have addressed its concerns, and reiterates that it cannot support the legislative proposal put forward in Part 7 of the Bill.

43. While raising no objection to the Administration's proposed amendment to sub-paragraph (a)(i) of the definition of "wasted costs", some members are concerned about the application of the proposed sub-paragraph (a)(ii). These members consider that the meaning of "any undue delay" and "any other misconduct" in sub-paragraph (a)(ii) are too wide and uncertain. The act or misconduct in question may not be serious act or misconduct which can otherwise be sufficiently dealt with by the disciplinary mechanisms put in place by the legal professional bodies. The proposed wording of sub-paragraph (a)(ii) may deter lawyers from pursuing their clients' interests by fear of incurring a personal liability to their clients' opponents and being penalized by

orders to pay costs without a fair opportunity to defend themselves. Members are of the view that it would be necessary for "any undue delay or any other misconduct" to be a serious misconduct.

44. The Administration has explained that it would be necessary for "any undue delay or any other misconduct" to constitute a misconduct. It has advised that the legal representative concerned is given a reasonable opportunity to appear before the court or the judge and show cause why the order should not be made under the proposed new section 18(2) of CCCO. Having regard to the inconsistent thresholds for making wasted costs orders under sub-paragraph (a)(i) and (a)(ii) of the definition of "wasted costs", members have reservation in supporting the Administration's proposed amendments to the definition of "wasted costs" and request the Administration to review the wording of sub-paragraph (a)(ii).

45. The Administration has reverted to the Bills Committee and has advised that it agrees that, for consistency, the word "serious" should be inserted before "misconduct" in sub-paragraph (a)(ii) of the definition of "wasted costs". The amendment would make it clear that "any undue delay" must amount to serious misconduct or must be caused by serious misconduct. The Administration will move an amendment to reflect that further refinement. In the light of the Administration's further amendment proposed to the definition of "wasted costs", the Bills Committee agrees that it will not propose amendments to Part 7 of the Bill.

Part 8 – amendments to provisions providing that the decision of the Court of First Instance on an appeal is final
(clauses 23 to 30)

46. The Administration has advised the Bills Committee that in December 2003, CFA decided in the case of *A Solicitor v The Law Society of Hong Kong & Secretary for Justice (Intervener)* [2004] 1 HKLRD 214 that the finality provision in section 13(1) of the Legal Practitioners Ordinance (LPO) (Cap. 159) was inconsistent with the power of final adjudication of CFA under Article 82 of the Basic Law. Section 13(1) of the Ordinance provides that an appeal against any order of a Solicitors Disciplinary Tribunal shall lie to the Court of Appeal and it includes a provision stipulating that "the decision of the Court of Appeal on any such appeal shall be final". Clauses 23 to 30 of the Bill seek to amend three Ordinances to give effect to the CFA's judgment by repealing provisions providing that the decision of the Court of First Instance on any appeal is final and by making consequential amendments. The Ordinances are –

- (a) Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg. A);

- (b) Pharmacy and Poisons Ordinance (Cap. 138); and
- (c) Lifts and Escalators (Safety) Ordinance (Cap. 327).

47. The Bills Committee has asked whether similar amendments should be made to the finality provisions contained in other Ordinances. The Administration has advised that 16 Ordinances had previously been identified as containing finality provisions which were identical to the finality provision in section 13(1) of Cap. 159 in all material aspects. These provisions were amended under the Statute Law (Miscellaneous Provisions) Ordinance 2005. A further three Ordinances, namely those referred to in paragraph 46 above, have been identified as containing provisions which are identical to the finality provision in all material aspects, save that, under each, the final decision is made by the Court of First Instance and not the Court of Appeal.

Part 9 – amendments consequential to the Rules of the High Court (Amendment) Rules 2000 (L.N. 129 of 2000) in relation to the time for serving notice of motion of appeal
(clauses 31 to 34)

48. Clauses 31 to 34 seek to amend the Rules of the High Court (Cap. 4 sub. leg. A) and LPO to provide for consequential amendments omitted in the previous amendment exercises.

49. The Administration has advised that the proposed amendments are consequential to the replacement of "6 weeks" in Rule 4(1)(c) of Order 59 of the Rules of the High Court by "28 days" pursuant to section 3(b) of the Rules of the High Court (Amendment) Rules 2000. It is considered necessary to rectify inconsistencies relating to the time for serving notices of motion of appeal in LPO and the Rules of the High Court.

Part 10 – amendments relating to LPO
(clauses 35 and 36)

50. The Bills Committee has noted that clauses 35 and 36 in Part 10 of the Bill seek to amend LPO –

- (a) to include the PCLL to be awarded by The Chinese University of Hong Kong in the definition of "Postgraduate Certificate in Laws". This will place PCLL graduates from that university in the same position as other PCLL graduates for the purposes of entering the legal profession; and
- (b) to make it clear that a law firm which intends to employ a bankrupt solicitor or a foreign lawyer should apply to the Law Society for written permission to do so, irrespective of whether

he holds a practising certificate or his registration status at the time of his bankruptcy.

51. In respect of paragraph 50(b) above, the Administration and the Law Society have advised the Bills Committee that the amendments are proposed by the latter and have been made after careful consideration and deliberation at its relevant Committee comprising representatives from a wide cross section of the profession.

Part 11 – amendments to remove certain minor inconsistencies between the English and Chinese texts of the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against Corruption Ordinance (Cap. 204)
(clauses 37 to 42)

52. Part 11 of the Bill seeks to amend the Chinese text of certain provisions in the Prevention of Bribery Ordinance and the Independent Commission Against Corruption Ordinance to remove certain minor inconsistencies between the English and Chinese texts.

53. In respect of the amendments to repeal "公職" and substitute "公務" in the relevant provisions in the Prevention of Bribery Ordinance and the Independent Commission Against Corruption Ordinance, the Administration has explained that the amendments seek to clarify the Chinese rendition of public officer in these two Ordinances in the light of the term used in the Interpretation and General Clauses Ordinance (Cap. 1).

Part 12 – amendments relating to new powers to substitute dates and titles of subsidiary legislation
(clause 43)

54. Clause 43 proposes to add to the Interpretation and General Clauses Ordinance the following two new powers to the Secretary for Justice –

- (a) to amend any Ordinance, by order published in the Gazette, to substitute the actual calendar date for any reference to a date by an expression that does not specify the actual date (e.g. commencement date, appointed date); and
- (b) to amend any subsidiary legislation, by order published in the Gazette, to replace a general reference to any subsidiary legislation by the title or citation of the subsidiary legislation.

The Administration has explained that the purpose is to improve the readability of the Laws of Hong Kong.

Part 13 – minor and technical amendments to various ordinances
(clauses 44 to 70)

55. Part 13 of the Bill comprises six Divisions which seek to rectify a number of irregularities and inconsistencies which have been detected in various Ordinances.

Division 2 of Part 13 – Provisions relating to PPS

56. The Bills Committee notes that the proposed amendments in Division 2 of Part 13 deal with provisions relating to the subject of PPS in four pieces of subsidiary legislation. In clauses 56(1)(c)(ii) and 56(2)(c)(ii) of the Bill, the reference to the website address of the Treasury is proposed to be amended, but no similar amendment is proposed to the reference to that website in other provisions stated in Division 2 of Part 13 of the Bill. Concern has been raised about the possible confusion in accessing the website of the Treasury if two URL addresses are available.

57. The Administration has explained that both URL addresses in question lead to the website of the Treasury. The website address of the Treasury is provided in the Forms in the legislation stated in Division 2 of Part 13 for the purpose of informing the public that details regarding payment through the internet can be obtained from that website. An individual Bureau may decide to adopt either version of the Treasury's website addresses in the Forms. Nonetheless, this will not affect the public in obtaining information from the Treasury's website, or lead to any interpretation issues in law. Hence, it is not necessary to amend the other provisions stated in Division 2 of Part 13.

Division 5 of Part 13 – Provisions relating to the commencement of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006

58. Division 5 of Part 13 (clauses 62 to 64) seeks to provide for partial commencement of Parts 3 and 4 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006) (Certification Ordinance), while certain provisions in the Chinese Medicine Ordinance (Cap. 549) that are referred to in these Parts of the Certification Ordinance are not yet in operation. Members have questioned the background for proposing the amendments.

59. The Administration has explained that in making preparation for the partial commencement of the Certification Ordinance, it is considered that it may not be entirely clear from the existing wording of the Certification Ordinance that the partial commencement approach for Parts 3 and 4 is authorized. To avoid uncertainties and any possible complications in future,

the Administration proposes to amend the Certification Ordinance to specifically authorize partial commencement as planned. The Administration has further advised that all the other Parts of the Certification Ordinance (i.e. Parts 1, 2 and 5) have come into operation on 1 December 2006.

60. The Bills Committee has not raised questions on other Divisions of Part 13.

Part 14 – amendments to achieve internal consistency and consistency between the English and Chinese texts of various ordinances
(clauses 71 to 79)

61. The Bills Committee has not raised any queries on Part 14 of the Bill which contains miscellaneous amendments of a minor nature to the following Ordinances to achieve internal consistency and consistency between the English and Chinese texts –

- (a) the Export (Certificates of Origin) Regulations (Cap. 60 sub. leg. H) (clause 71);
- (b) the Inland Revenue Ordinance (Cap. 112) (clause 72);
- (c) the Inland Revenue (Amendment) Ordinance 2004 (12 of 2004) (clause 73);
- (d) the Land Registration Fees Regulations (Cap. 128 sub. leg. B) (clause 74);
- (e) the Birth Certificate (Shortened Form) Regulations (Cap. 174 sub. leg. A) (clause 75);
- (f) the Prison Rules (Cap. 234 sub. leg. A) (clause 76);
- (g) the Electoral Affairs Commission (Registration of Electors) (Village Representative Election) Regulation (Cap. 541 sub. leg. K) (clause 77);
- (h) the Companies (Amendment) Ordinance 2004 (30 of 2004) (clause 78); and
- (i) the Aviation Security (Amendment) Ordinance 2005 (14 of 2005) (clause 79).

Committee Stage amendments

62. Apart from the CSAs highlighted in paragraphs 10, 42 and 45 above, the Administration will also move some technical and consequential amendments. A full set of CSAs to be moved by the Administration and agreed by the Bills Committee is in **Appendix III**. The CSA to be moved by the Bills Committee is in **Appendix IV**.

Follow-up actions

63. The Bills Committee has agreed to refer to the Panel on Financial Affairs for follow up issues relating to the review of the "abscondee" regime under BO (paragraph 11 refers).

Resumption of the Second Reading debate

64. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting on 30 April 2008.

Advice sought

65. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
16 April 2008

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007

Membership List

Chairman	Hon Margaret NG
Members	Hon James TO Kun-sun
	Hon Emily LAU Wai-hing, JP
	Hon LI Kwok-ying, MH, JP
	Hon LEUNG Kwok-hung
	Hon Ronny TONG Ka-wah, SC
	(Total : 6 Members)
Clerk	Miss Betty MA
Legal adviser	Mr Timothy TSO
Date	11 May 2007

Appendix II

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2007

List of organisations/individual which/who have given views to the Bills Committee

Amnesty International Hong Kong

Hong Kong Federation of Students

Hong Kong Human Rights Commission

Hong Kong Human Rights Monitor

The Hong Kong Bar Association

The Law Society of Hong Kong

Mr LO Wai-ming

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

COMMITTEE STAGEAmendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
Part 2	By deleting the Part.
21	In the proposed definition of "wasted costs" - (a) in paragraph (a)(i), by deleting "improper or unreasonable" and substituting "seriously improper"; (b) in paragraph (a)(ii), by deleting "misconduct or default" and substituting "serious misconduct"; (c) in paragraph (b), by deleting "delay, misconduct or default" and substituting "delay or misconduct".
22	In the proposed section 18(3), in the Chinese text, by deleting "辯論" and substituting "對辯".
62	In the proposed section 1(3)(b), by adding "and Mesothelioma" after "Pneumoconiosis".

64 By adding immediately before subclause (1) -
“(1A) Section 31 is amended by
renumbering the new section 50 as section
51.”.

64(1) By deleting “section 50(1)” and substituting
“section 51(1)”.

64(2) By deleting “section 50(2)” and substituting
“section 51(2)”.

64(3) By deleting “section 50” and substituting
“section 51”.

64(4) By deleting “section 50(3)” and substituting
“section 51(3)”.

78 By deleting the clause and the cross-heading
immediately before it and substituting -

“Companies Ordinance

78. Interpretation of Part XI

Section 341(1) of the Companies
Ordinance (Cap. 32) is amended, in the
definition of “pre-amended Ordinance”, in

paragraph (c), in the Chinese text, by
repealing “號)第” and substituting “號)附表 2
第”.”.

Appendix IV

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2007

COMMITTEE STAGE

Amendment to be moved by the Honourable Margaret NG

Clause

Amendment Proposed

Part 3 By deleting the Part.