

For discussion
on 26 November 2007

LegCo Panel on Administration of Justice and Legal Services

Statute Law (Miscellaneous Provisions) Bill 2008

Introduction

A number of amendments to various Ordinances are proposed in the above Bill. The proposed amendments are technical and largely non-controversial but are important for the purpose of updating or improving existing legislation. The object of this paper is to seek the preliminary views of Members of the Panel on the proposed amendments.

Background and argument

General background

2. The Administration has adopted the use of omnibus bills in recent years as an efficient way of effecting miscellaneous improvements to existing legislation. This avoids the requirement to make bids for separate slots relating to each Ordinance, the amendments to which typically involve only a few clauses.

Outline of proposed amendments

3. The proposed amendments are listed below under four headings.

(1) Various Ordinances containing offence provisions with the drafting formula “to the satisfaction of” an enforcement official

4. The Court of First Instance held that the drafting formula was too vague to enable a person to ascertain the elements of the offences under the provisions concerned. The proposed amendment will add a requirement that no offence is committed unless the official has specified to the affected person the

measures to be taken to his “satisfaction”, or the person has commenced the regulated activity without approaching the official to ascertain the measures to be taken. The burden of proof in either case will expressly be on the prosecution.

(2) Conveyancing and Property Ordinance (Cap. 219)

5. The Law Society, prompted by two judgments, namely *Yiu Ping Fong & Anor v. Lam Lai Hing Lana*, HCMP No. 3617 of 1998 and *Guang Zhou Real Estate Development (Hong Kong) Co. Ltd. & Anor v. Summit Elegance Limited*, HCA 1531 of 1998, proposed that a purchaser of a property cannot require a vendor to produce any documents made before the date for the statutory commencement of title or make any requisitions in respect of such documents.

6. The Law Society is concerned that these decisions are to the effect that, notwithstanding section 13 of the Conveyancing and Property Ordinance (which limits the period for deducing title back to a good root of title at least 15 years prior to the date of the sale and purchase agreement), a vendor has the duty to produce the “originals” of “all” title deeds and documents relating “exclusively” to the subject property to fulfil his duty to “give” a good title. This duty would theoretically include the duty to produce original title deeds that were made before the required intermediate root of title.

7. The Law Society has observed that solicitors, based on their previous interpretation of section 13(2) of the Conveyancing and Property Ordinance, had not been too concerned about obtaining the original pre-intermediate root title deeds. The practice has been to accept copies of title documents either certified by a solicitor or a Government public officer, or attested by two solicitors’ clerks.

8. Based on a Senior Counsel’s advice, the Law Society proposed that a new section 13A should be incorporated into the Conveyancing and Property Ordinance. The effect is that, unless the contrary intention is expressed, a purchaser of land shall be entitled to require from the vendor, for the purpose of giving and making title to that land, the delivery of the original of (i) the Government lease if it relates exclusively to that land and (ii) any document that relates exclusively to that land and is required to be produced by the vendor as proof of title to that land (that is, a good root of title at least 15 years prior to the date of the sale and purchase agreement). The proposed amendment would help to alleviate potential problems for many property owners.

(3) Legal Officers Ordinance (Cap. 87) and related amendments

9. Under section 3(1) of the Legal Officers Ordinance (Cap. 87), a legal officer, in respect of the matters mentioned in section 4(1), has all the rights of a barrister and a solicitor admitted under the Legal Practitioners Ordinance (Cap. 159). Under section 2 of the Legal Officers Ordinance, an officer lawfully performing the functions of any of the officers designated in Schedule 1 is a legal officer.

10. We propose to amend Schedule 1 by adding “Senior Public Prosecutor” and “Public Prosecutor” and deleting “Assistant Government Counsel”. Senior Government Counsel and Government Counsel in the Prosecutions Division of the Department of Justice will respectively adopt the new post titles of “Senior Public Prosecutor” and “Public Prosecutor” when this Bill comes into operation. The rank of “Assistant Government Counsel” is obsolete and will therefore be deleted from the Schedule. Related amendments would also be introduced.

(4) Minor and technical amendments to the Rating Ordinance (Cap. 116), etc.

11. An amendment to the Chinese text of section 46 of the Rating Ordinance is required to take out a superfluous subsection number. The Bill may include other minor and technical amendments identified by the Law Drafting Division.

Public consultation and policy support

Various Ordinances containing offence provisions with the drafting formula “to the satisfaction of” an enforcement official

12. The Legislative Council’s Panel on Administration of Justice and Legal Services was consulted on this proposal at its meeting on 27 November 2006 and supports it.

Conveyancing and Property Ordinance (Cap. 219)

13. Consultation has been conducted among relevant parties including the Law Society of Hong Kong, the Hong Kong Bar Association, The Real

Estate Developers Association of Hong Kong, The Hong Kong Conveyancing & Property Law Association Limited, the Consumer Council, The Hong Kong Monetary Authority, the Hong Kong Association of Banks, Estate Agents Authority, the School of Law of City University of Hong Kong, the Faculty of Law of The University of Hong Kong, the School of Law of The Chinese University of Hong Kong. They either supported or expressed no objection to the proposal.

Others

14. No public consultation is considered necessary in respect of other proposed amendments due to their minor and non-controversial nature.

Legal Policy Division
Department of Justice
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