

For discussion
on 29 May 2012

**Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2012**

Follow up on the issues raised at the meeting on 22 May 2012

This paper seeks to address the questions raised by Members at the meeting held on 22 May 2012 and sets out the proposed Committee Stage Amendments (CSAs) to be moved by the Administration.

Consequential amendment to the long title of Cap 159 proposed by clause 33(1) of the Bill

2. As a result of the enactment of the provisions relating to "solicitor corporation" under the Legal Services Legislation (Miscellaneous Amendments) Ordinance (94 of 1997) ("1997 Ordinance") (which have not come into operation), consequential amendment has been made to the then long title of the Legal Practitioners Ordinance (Cap. 159). Details of the amendment are set out in item 1 of Schedule 1 to the 1997 Ordinance (as shown at p. 48 of the marked-up copy of the Bill prepared by the Legal Service Division of the Legislative Council). The amended version of the long title reads as follows:

"To make amended provision for the admission and registration of legal practitioners and their employees, and of notaries public, approval and registration of barristers, legal practice entities and notaries public, for the employment of trainee solicitors and others by those entities, and for regulating the practice of law, and for purposes connected therewith."

3. Subsequent to the 1997 Ordinance, the long title of Cap. 159 has been amended by section 2 of the Legal Practitioners (Amendment) Ordinance (Order 27 of 1998) ("1998 Ordinance"). The amended version, which currently appears in Cap. 159, reads as follows:

"To make amended provision for the admission and registration of legal practitioners and their employees, and of notaries public, the appointment and registration of notaries public, and for purposes

connected therewith."

4. As a result of the amendment to the long title of Cap. 159 in the 1998 Ordinance, the amendment specified in item 1 of Schedule 1 to the 1997 Ordinance cannot match with the current version of the long title of Cap. 159. Therefore, the Administration proposes to amend the amendment in the 1997 Ordinance by clause 33(1) of the Bill. The long title, as amended by clause 33(1) of the Bill, will read as follows:

"To make amended provision for the admission and registration of legal practitioners and their employees, the appointment and registration of notaries public, and for purposes connected therewith. , approval and registration of barristers and legal practice entities; for the employment of trainee solicitors and others by those entities; for the appointment and registration of notaries public; for regulating the practice of law, and for connected purposes."

Amendments Relating to Editorial Powers

5. Part 7 of the Bill amends the Legislation Publication Ordinance (Cap. 614) ("LPO") and the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) ("Loose-leaf Ordinance") to facilitate the editorial work involved in preparing and updating the Laws of Hong Kong. Clauses 18 and 21 of Part 7 respectively amend section 12 of LPO and section 2A of the Loose-leaf Ordinance to give the Secretary for Justice wider editorial powers.

6. Clause 18(2) of the Bill adds a new section 12(ab) to LPO and clause 21(3) of the Bill adds a new section 2A(1)(ab) to the Loose-leaf Ordinance. The new provisions empower the Secretary for Justice to, in an Ordinance, insert after a reference to the title, short title or citation of another Ordinance, the chapter number given to that other Ordinance. For example, we could replace "Lifts and Escalators Ordinance (8 of 2012)" with "Lifts and Escalators Ordinance (Cap. 6XX)", i.e. a new chapter number to be
----- assigned(see **Annex A**).

7. Clause 18(3) of the Bill adds a new section 12(ga) to LPO and clause 21(4) of the Bill adds a new section 2A(1)(ga) to the Loose-leaf Ordinance. At present, we only have the power to insert the English or Chinese equivalent after an item. The new provisions empower the Secretary for Justice to, in an Ordinance, insert the English or Chinese equivalent after a definition. For example, we could insert, in the English text, "(《修訂條例》)" after "**amendment Ordinance**" in section 40T(1) of the

----- Legal Practitioners Ordinance (Cap. 159) (see **Annex B**).

Proposed CSAs

8. Division 4 of Part 12 of the Bill repeals various items of subsidiary legislation set out in the Schedule that have ceased to be in force. The Administration further proposes that the following two items of subsidiary legislation be repealed:

(a) Hong Kong Airport (Control of Obstructions) (Consolidation) Order (Cap. 301 sub. leg. A); and

(b) Lifts and Escalators (Safety) (Fees) Regulations (Cap. 327 sub. leg. A).

9. The Hong Kong Airport (Control of Obstructions) (Consolidation) Order (Cap. 301 sub. leg. A) was made under section 3(1)(b) of the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301). Section 3(1)(b) of Cap. 301 was repealed by the Hong Kong Airport (Control of Obstructions) (Amendment) Ordinance 1994 (88 of 1994) and substituted by section 3(1AA). Subsequent to the enactment of section 3(1AA) of Cap. 301, the Hong Kong Airport (Control of Obstructions) (No. 2) Order 1997 (Cap. 301 sub. leg. D) was made in 1997 under section 3(1AA) of Cap. 301. The Hong Kong Airport (Control of Obstructions) (Consolidation) Order (Cap. 301 sub. leg. A) has ceased to be in force. The Administration proposes to move CSAs to include the Hong Kong Airport (Control of Obstructions) (Consolidation) Order (Cap. 301 sub. leg. A) in the Schedule to the Bill.

10. The Lifts and Escalators (Safety) Ordinance (Cap. 327) is to be repealed by section 157 of the Lifts and Escalators Ordinance (8 of 2012), which has not yet come into operation. The Lifts and Escalators (Safety) (Fees) Regulations (Cap. 327 sub. leg. A) will cease to be in force on commencement of section 157 of the Lifts and Escalators Ordinance (8 of 2012). Accordingly, the Administration proposes to move CSAs to add a new clause 72(2) to the Bill to repeal the Lifts and Escalators (Safety) (Fees) Regulations (Cap. 327 sub. leg. A) and to amend clause 1 of the Bill to provide that clause 72(2) of the Bill comes into operation on the day on which section 157 of the Lifts and Escalators Ordinance (8 of 2012) comes into operation.

- 11. The draft CSAs are at **Annex C**. Members are invited to note and consider the proposed CSAs to be moved by the Administration.

Department of Justice
May 2012

Lifts and Escalators Ordinance

Schedule 16

A823

Part 1

Ord. No. 8 of 2012

Schedule 16

[ss. 156 & 160]

Consequential and Related Amendments**Part 1****Amendments to Factories and Industrial Undertakings
(Goods Lifts) Regulations (Cap. 59 sub. leg. O)****1. Regulation 2 substituted**

Regulation 2—

↑ Cap. 6XX**Repeal the regulation****Substitute****“2. Application**

(1) These regulations apply to—

- (a) a goods lift exempted under section 148(2) of the Lifts and Escalators Ordinance (~~8 of 2012~~); and
- (b) a service lift used in an industrial undertaking.

(2) In subregulation (1)—

goods lift (載貨升降機) means a goods lift as defined by section 2(1) of the Lifts and Escalators Ordinance (~~8 of 2012~~); ↑

service lift (載物升降機) means a service lift as defined by section 2(1) of the Lifts and Escalators Ordinance (~~8 of 2012~~). ↑

2. Regulation 3 amended (Interpretation)Regulation 3, definition of *competent examiner*—

Repeal paragraph (b)

↑ Cap. 6xx

Substitute

↑ “(b) who is a registered lift engineer as defined by section 2(1) of the Lifts and Escalators Ordinance (~~8 of 2012~~);”.

Part 2

Amendments to Buildings Ordinance (Cap. 123)

3. Section 2 amended (Interpretation)

(1) Section 2(1)—

Repeal the definition of *escalator*

Substitute

“*escalator* (自動梯) means an escalator as defined by section 2(1) of the Lifts and Escalators Ordinance (~~8 of 2012~~);”.

(2) Section 2(1)—

Repeal the definition of *lift*

Substitute

↑ “*lift* (升降機) means a lift as defined by section 2(1) of the Lifts and Escalators Ordinance (~~8 of 2012~~);”.

Part 3

Amendment to Prevention of Bribery Ordinance (Cap. 201)

4. Schedule 1 amended (Public bodies)

Schedule 1, after item 115—

(3) 在本條中，“開支”(expenses)包括證人的開支及費用、大律師的費用、律師的費用、核數師的費用，以及其他收費及代墊付的費用。

40S. 法例條文的效力高於公證人協會的章程細則

如本條例的條文與公證人協會的組織章程大綱及章程細則的條文有任何抵觸，須以本條例的條文為準。

40T. 過渡性安排

(1) 在本條中，“**《修訂條例》**”(amendment Ordinance)指《1998年法律執業者(修訂)條例》(1998年第27號)。

(2) 除文意另有所指外，本條例或任何其他條例中凡提述——

- (a) 公證人，即包括提述在緊接《修訂條例》的生效日期*前憑藉根據當時有效的本部註冊為公證人的人；
- (b) 公證人註冊紀錄冊，即包括提述在緊接《修訂條例》的生效日期*前根據當時有效的本部備存的註冊紀錄冊；
- (c) 根據本部作出的命令，即包括提述在緊接《修訂條例》的生效日期*前根據當時有效的本部作出的命令。

40-43. (由 1998 年第 27 號第 3 條廢除)

(第 IV 部由 1998 年第 27 號第 3 條代替)

第 V 部

與執業有關的特權、限制及罪行

44. 非法執業為大律師或公證人的罰則

(1) 任何——(由 1998 年第 27 號第 5 條修訂)

- (a) 並非是合資格大律師而直接或間接執業為大律師或以大律師身分行事的人；
- (b) 並非是合資格公證人而直接或間接執業為公證人或以公證人身分行事的人。

* 生效日期：2005 年 6 月 30 日。

(3) In this section, “expenses” (開支) includes witnesses’ expenses and fees, counsel’s fees, solicitor’s fees, auditor’s fees and other charges and disbursements.

40S. Statutory provisions to prevail over Society of Notaries’ articles

In the case of any inconsistency between the provisions of this Ordinance and the Memorandum and Articles of Association of the Society of Notaries, the provisions of this Ordinance shall prevail.

40T. Transitional arrangements

(《修訂條例》)

(1) In this section, “amendment Ordinance” means the Legal Practitioners (Amendment) Ordinance 1998 (27 of 1998).

(2) Unless the context otherwise requires, reference in this or any other Ordinance—

- (a) to a notary public includes reference to a person who is a notary public by virtue of registration under this Part as in force immediately before the commencement* of the amendment Ordinance;
- (b) to the register of notaries public includes reference to the register kept under this Part as in force immediately before the commencement* of the amendment Ordinance;
- (c) to any order made under this Part includes reference to an order made under this Part as in force immediately before the commencement* of the amendment Ordinance.

40-43. (Repealed 27 of 1998 s. 3)

(Part IV replaced 27 of 1998 s. 3)

PART V

PRIVILEGES, RESTRICTIONS AND OFFENCES IN CONNECTION WITH PRACTICE

44. Penalty for unlawfully practising as a barrister or notary public

- (1) Any person who— (Amended 27 of 1998 s. 5)
- (a) not being a qualified barrister, either directly or indirectly, practises or acts as a barrister;
 - (b) not being a qualified notary public, either directly or indirectly, practises or acts as a notary public,

* Commencement date: 30 June 2005.

Statute Law (Miscellaneous Provisions) Bill 2012

Committee Stage

Amendments to be moved by the Secretary for Justice

<u>Clause</u>	<u>Amendment Proposed</u>
1(2)	By deleting “subsection (3)” and substituting “subsections (3) and (4)”.
1	By adding— “ (4) Section 72(2) comes into operation on the day on which section 157 of the Lifts and Escalators Ordinance (8 of 2012) comes into operation.”.
72	(a) By renumbering the clause as clause 72(1). (b) By adding— “ (2) The Lifts and Escalators (Safety) (Fees) Regulations (Cap. 327 sub. leg. A) is repealed.”.
Schedule	By adding after item 10— “10A. Hong Kong Airport (Control of Obstructions) (Consolidation) Order (Cap. 301 sub. leg. A).”.