

立法會
Legislative Council

LC Paper No. CB(4)1051/13-14
(These minutes have been seen
by the Administration)

Ref : CB4/BC/3/13

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014

Minutes of the third meeting
held on Monday, 23 June 2014, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK
Hon CHAN Chi-chuen
Hon Dennis KWOK
Hon Martin LIAO Cheung-kong, JP

Members absent : Hon Albert HO Chun-yan
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan
Dr Hon Fernando CHEUNG Chiu-hung

Public Officers attending : Item I

Department of Justice

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Leonora IP
Senior Assistant Law Draftsman

Ms Anthea LI
Senior Government Counsel

Ms Anita NG
Senior Government Counsel

Ms Karmen KWOK
Senior Government Counsel

Office of the Communications Authority

Mr CHENG Chi-keung
Chief Telecommunications Engineer (Development)

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (4)4

Legal Adviser : Mr Timothy TSO
Assistant Legal Adviser 2

Staff in attendance : Mr KWONG Kam-fai
Senior Council Secretary (4)4

Ms Sandy HAU
Legislative Assistant (4)4

I. Meeting with the Administration

(A) Parts 15 (from clause 163 onwards), 6, 10, 11, 12 and 13 of the Bill

(LC Paper No. CB(3)561/13-14 -- The Bill

File Ref.: LP 3/00/13C -- Legislative Council Brief
issued by the Department
of Justice

- LC Paper No. LS44/13-14 -- Legal Service Division Report
- LC Paper No. CB(4)679/13-14(02) -- Marked-up copy prepared by the Legal Service Division
- LC Paper No. CB(4)691/13-14(01) -- Assistant Legal Adviser's letter dated 19 May 2014 to the Administration
- LC Paper No. CB(4)740/13-14(01) -- Administration's reply dated 27 May 2014 to the letter from Assistant Legal Adviser's letter dated 19 May 2014
- LC Paper No. CB(4)835/13-14(01) -- Administration's another reply dated 16 June 2014 to the letter from Assistant Legal Adviser's letter dated 19 May 2014
- LC Paper No. CB(4)835/13-14(02) -- Administration's another reply dated 18 June 2014 to the letter from Assistant Legal Adviser's letter dated 19 May 2014
- LC Paper No. CB(4)679/13-14(03) -- Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(4)693/13-14(01) -- Table provided by the Administration with information on the 15 Parts of the Bill)

(B) Issues arising from previous meetings

- (LC Paper No. CB(4)835/13-14(03) -- List of follow-up actions

arising from the discussion at the meeting on 20 May 2014

LC Paper No. CB(4)835/13-14(04) -- The Administration's response to issues raised by the Bills Committee at the meeting on 20 May 2014

LC Paper No. CB(4)835/13-14(05) -- List of follow-up actions arising from the discussion at the meeting on 27 May 2014

LC Paper No. CB(4)835/13-14(06) -- The Administration's response to issues raised by the Bills Committee at the meeting on 27 May 2014)

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members examined Parts 15 (from clause 163 onwards), 6, 10, 11 and Part 12 (clauses 60 to 64) of the Bill.

3. The Administration was requested to –

Part 6

- (a) advise on the prevailing arrangements, if any, for mutual legal assistance in criminal matters between Hong Kong and the Mainland (such as by way of any memorandum of understanding);

Part 6 – Clause 48

- (b) make reference to other Ordinances and advise whether the expressions of "宗教式誓章" and "非宗教式誓詞" are standardized expressions in the Chinese text for "affidavit" and "affirmation" respectively;

- (c) explain, with reference to cases (if any), what constitutes "unfairness" under the proposed section 77F(2)(c)(iii) of the Evidence Ordinance (Cap. 8);
- (d) provide the proposed Committee Stage amendment ("CSA") to substitute "該書面供詞或該文件" by "該書面供詞及該文件" in the Chinese text of the proposed section 77F(2)(c)(iii);

Part 10

- (e) provide the proposed CSA to delete Part 10 of the Bill;

Part 12 – Clause 63

- (f) provide the proposed CSA to the proposed Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) with regard to the Companies Ordinance (Cap. 622) which has commenced operation on 3 March 2014; and

Part 15 – Clause 165

- (g) make reference to other Ordinances and advise whether it was in order to use "信號", instead of "訊號", as the Chinese rendition of the term "signals" in Regulation 2(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E).

(Post-meeting note: The Administration's written response [LC Paper No. CB(4)862/13-14(02)] was issued to members on 10 July 2014 vide LC Paper No. CB(4)920/13-14.)

II. Any other business

- 4. There being no other business, the meeting ended at 4:02 pm.

**Proceedings of the third meeting of the
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014
on Monday, 23 June 2014, at 2:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
000841 - 000910	Chairman	Opening remarks	
<i>Discussion on Part 15 (from clause 163 onwards) of the Bill</i>			
000910 - 001328	Chairman Administration Mr Martin LIAO Mr James TO	<u>Clause-by-clause examination</u> <i>Clauses 163 to 164</i> Members raised no query. <i>Clause 165</i> Mr Martin LIAO enquired whether "訊號" should be used as the Chinese rendition for "signals". The Administration advised that "信號" was used as the Chinese rendition for "signals" in Regulation 2(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E). Mr James TO requested the Administration to make reference to other Ordinances and advise whether it was in order to use "信號", instead of "訊號", as the Chinese rendition for "signals" in Regulation 2(1) of the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E).	The Administration to take action as in paragraph 3(g) of the minutes
001329 - 002046	Administration Chairman Mr Dennis KWOK	<i>Clauses 166 to 173</i> Members raised no query. In response to Mr Dennis KWOK's enquiry about his question on clause 162 raised at the last meeting, the Chairman advised that members might follow up the Administration's written responses to the issues raised at the past meetings at a later stage.	
<i>Discussion on Part 6 of the Bill</i>			
002046 - 003329	Chairman Administration Mr Paul TSE Mr Martin LIAO Assistant Legal Adviser 2 ("ALA2")	The Administration's briefing on Part 6 of the Bill. Mr Martin LIAO enquired whether the deposition which was taken by a notary public in places outside Hong Kong and in the Mainland and was received pursuant to a request for assistance in criminal matters would be admitted as evidence in criminal proceedings.	

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		<p>The Administration clarified that the proposed amendments to sections 77F and 77G of the Evidence Ordinance (Cap. 8) and to section 9 of the Mutual Legal Assistance in Criminal Matters Ordinance ("MLACMO") (Cap. 525) related to evidence obtained pursuant to requests made under MLACMO only. The MLACMO did not apply as between the Hong Kong Special Administrative Region and the Mainland. Further, there was no arrangement between the Hong Kong Special Administrative Region and the Mainland for mutual legal assistance.</p> <p>Mr LIAO requested the Administration to advise on the prevailing arrangements, if any, for mutual legal assistance in criminal matters between Hong Kong and the Mainland (such as by way of any memorandum of understanding).</p> <p><u>Clause-by-clause examination</u></p> <p><i>Clause 48</i></p> <p>Mr Paul TSE requested the Administration to make reference to other Ordinances and advise whether the expressions of "宗教式誓章" and "非宗教式誓詞" were standardized expressions in the Chinese text for "affidavit" and "affirmation" respectively, and whether there was any examples in other legislation.</p>	<p>The Administration to take action as in paragraph 3(a) of the minutes</p> <p>The Administration to take action as in paragraph 3(b) of the minutes</p>
003330 - 003929	Mr Paul TSE Administration	<p>Mr Paul TSE referred to the proposed section 77F(2)(c)(iii) of the Evidence Ordinance (Cap. 8) which stated, inter alia, that "the court is satisfied that no unfairness is likely to occur", and enquired what would constitute "unfairness".</p> <p>The Administration advised that it would be for the court to decide what constituted "unfairness" having regard to the actual circumstances.</p> <p>At Mr TSE's request, the Administration would provide further explanation, with reference to cases (if any), on what constituted "unfairness" under the proposed section 77F(2)(c)(iii) of the Evidence Ordinance (Cap. 8).</p>	<p>The Administration to take action as in paragraph 3(c) of the minutes</p>
003930 - 004029	ALA2 Administration	<p>ALA2 referred to the Chinese text and English text of the proposed section 77F(2)(c)(iii) which did not tally.</p> <p>The Administration said that it would propose a Committee Stage amendment ("CSA") to substitute "該書面供詞或該文件" by "該書面供詞及該文件" in the Chinese text of the proposed section 77F(2)(c)(iii).</p>	<p>The Administration to take action as in paragraph 3(d) of the minutes</p>

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004030 - 004613	Administration Mr Martin LIAO	<p><i>Clause 49</i></p> <p>Mr Martin LIAO sought further clarification on the admissibility of evidence obtained from places outside Hong Kong under the proposed amendments.</p> <p>The Administration advised that the proposed section 77G(4A) of the Evidence Ordinance would provide for the admissibility of certain evidence which was attached to an affidavit, affirmation or declaration obtained pursuant to a request for assistance in criminal matters made under MLACMO. The evidence might not necessarily be obtained through court proceedings.</p> <p><i>Clause 50</i></p> <p>Members raised no query.</p>	
<i>Discussion on Part 10 of the Bill</i>			
004614 - 005213	Chairman Administration Ms Emily LAU Dr Priscilla LEUNG Mr Martin LIAO	<p>The Administration advised that Part 10 was initiated by the Law Society of Hong Kong ("the Law Society"). The Law Society aimed to repeal item 29 of Schedule 1 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997) ("the 1997 Ordinance") to retain the definition of "controlled trust" for the purposes of Part IIA of and Schedule 2 to the Legal Practitioners Ordinance (Cap. 159) ("LPO").</p> <p>The Administration advised that when the Panel on Administration of Justice and Legal Services was consulted on the proposed Bill in December 2013, there was a query relating to the policy justification of the amendment proposed by the Law Society. The Law Society, on being consulted, indicated that the policy intent was that the law prior to the 1997 Ordinance was to be reinstated and that only solicitors or foreign lawyers could be trustees or co-trustees of a trust under the existing provisions of LPO.</p> <p>The Law Society, on being further consulted, had come to the view that the currently proposed amendment might not achieve the intended objectives. The Law Society subsequently confirmed in May 2014 that it would not proceed with the proposed amendment. Hence, the Administration would move a CSA to delete Part 10 of the Bill.</p> <p>Referring to Mr Martin LIAO's enquiry under Part 6 of the Bill about the arrangement between Hong Kong and the Mainland, Dr Priscilla LEUNG recalled that in March 1999, an arrangement had been made for mutual service of judicial documents between Hong Kong and the Mainland. She said that the Administration might wish to check whether the aforesaid arrangement was relevant to Mr LIAO's enquiry.</p>	The Administration to take action as in paragraph 3(e) of the minutes

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005214 - 005537	Mr Paul TSE Administration	<p>Mr Paul TSE commented that –</p> <p>(a) it was not desirable for a professional body to initiate a legislative amendment and subsequently withdraw it; and</p> <p>(b) the Administration should exercise prudence before introducing and withdrawing any proposed legislative amendments.</p> <p>The Administration advised that as the proposed amendment related to regulation of the professional practice of solicitors and foreign lawyers, the Law Society, as the professional body, was in the best position to consider whether the proposed amendment should be proceeded with. The Administration would respect the Law Society's decision on the matter and would follow up with the Law Society when necessary, especially when public interest was involved.</p>	
<i>Discussion on Part 11 of the Bill</i>			
005538 - 010004	Chairman Administration ALA2	<p>The Administration's briefing on Part 11 of the Bill.</p> <p><u>Clause-by-clause examination</u></p> <p><i>Clauses 58 to 59</i></p> <p>ALA2 referred to clauses 58 and 59 and sought clarification on the meaning of "relevant documents" in these clauses.</p> <p>The Administration advised that it would be for the Council of the Law Society to decide what were the relevant documents having regard to the application under consideration.</p>	
010005 - 010302	Mr Dennis KWOK Administration	<p>Mr Dennis KWOK noted that under the proposed provisions, the Council of the Law Society could exercise its power to revoke/restore the suspension from practice or registration before the Solicitors Disciplinary Tribunal ("the Tribunal") made a decision. He enquired whether the power could be exercised by the Council after the Tribunal had made a decision, and whether the solicitor or foreign lawyer concerned could appeal against the Council's decision to impose the suspension, or to revoke/restore the suspension.</p> <p>The Administration provided the following information –</p> <p>(a) According to existing section 8A(3) of LPO, the suspension from practice or registration would only be imposed pending a decision of the Tribunal. The proposed provisions would only empower the Council to revoke/restore the</p>	

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		<p>suspension before the Tribunal's decision.</p> <p>(b) Currently, there was an appeal mechanism regarding the decision of the Tribunal. However, the decision of the Council to suspend and to revoke/restore the suspension was an interim measure pending the decision of the Tribunal and was not subject to any appeal. If a person was aggrieved by the decision of the Council, he might consider applying for judicial review.</p>	
010303 - 010457	Mr Martin LIAO Administration	<p>With regard to existing section 8A of LPO, Mr Martin LIAO enquired –</p> <p>(a) whether the solicitor or foreign lawyer concerned could make representation to the Council; and</p> <p>(b) in deciding whether the solicitor or foreign lawyer concerned was unfit to practise, how the Council would consider his/her mental and physical health.</p> <p>The Administration explained that under existing section 8A of LPO –</p> <p>(a) in considering whether the solicitor or foreign lawyer was unfit to practise, the Council of the Law Society might require the person concerned to produce relevant documents for examination; and</p> <p>(b) the solicitor or foreign lawyer concerned could make written representations to the Council .</p>	
010458 - 010720	Mr Paul TSE Administration	<p>Mr Paul TSE enquired on the reasons for the Law Society to initiate the proposed amendments.</p> <p>The Administration advised that according to the Law Society, greater flexibility should be provided to its Council so that it could also revoke or restore a suspension imposed on the solicitor or foreign lawyer in the light of new developments, such as the withdrawal of criminal prosecution against the person concerned.</p>	
<i>Discussion on Parts 12 and 13 of the Bill</i>			
010721 - 011940	Chairman Administration ALA2	<p>The Administration's briefing on Parts 12 and 13 of the Bill and explanation on the need to rectify the technical irregularities regarding unauthorized consolidation. In gist, section 5(d) of the Revised Edition of the Laws Ordinance 1965 provided for the power to consolidate instruments of the same nature into a single instrument. There was no similar consolidation power under the Laws (Loose-leaf Publication) Ordinance 1990 but the consolidation practice continued in respect of a number of consolidated instruments in the Loose-leaf edition. The proposed amendments aimed to rectify the</p>	

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		<p>irregularities.</p> <p>The Bills Committee noted that as set out in Part 1 of the Bill, Division 4 of Part 12 of the Bill (containing the validation provisions in relation to the technical irregularities arising from unauthorized consolidation) would come into operation immediately before the commencement of Divisions 1 to 3 of Part 12 of the Bill.</p>	
011941 - 012250	Mr Martin LIAO Administration ALA2	<p>Mr Martin LIAO sought confirmation on whether the proposed amendments could effectively validate the irregularities arising from the unauthorized consolidation practice under the Laws (Loose-leaf Publication) Ordinance 1990.</p> <p>The Administration advised that upon enactment of the proposed amendments, the legal effect of the consolidation would not be doubtful. Referring to the specifications made under section 43 of the Interpretation and General Clauses Ordinance ("IGCO") (Cap. 1), it explained that upon enactment of the proposed amendments under Part 12 the Bill, the original Gazette notices would be deemed to have amended the Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) and the amendments would be deemed to have come into operation on the date on which the Gazette notices came into operation.</p> <p>The Administration further advised that upon enactment of the provisions in Part 12 of the Bill, future amendments to the currently unauthorized consolidated items in the Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) would be legally in order.</p>	
012251 - 012542	Mr Paul TSE Administration	<p>In reply to Mr Paul TSE, the Administration informed members that it had come to the Administration's attention in 1997 that there were unauthorized consolidation practice although the Laws (Loose-leaf Publication) Ordinance 1990 did not contain the consolidation power previously provided under the Revised Edition of the Laws Ordinance 1965. The Administration had therefore ceased to consolidate the specifications made under section 43 of IGCO to the Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C). Instead, a note was added to the end of the Schedule setting out the particulars of each Gazette notice made after 1 July 1997 which specified the public offices.</p>	
012543 - 013155	Administration ALA2 Chairman	<p><u>Clause-by-clause examination on Part 12</u></p> <p><i>Clauses 60 to 62</i></p> <p>Members raised no query.</p>	

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		<p><i>Clause 63</i></p> <p>The Administration would move a CSA to the proposed Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) with regard to the Companies Ordinance (Cap. 622) which had commenced operation on 3 March 2014.</p> <p><i>Clause 64</i></p> <p>Members raised no query.</p>	<p>The Administration to take action as in paragraph 3(f) of the minutes</p>
<i>Discussion on Part 6 of the Bill</i>			
013156 - 013327	Chairman Administration Mr Martin LIAO	<p>In response to Mr Martin LIAO's enquiry about mutual legal assistance raised earlier, the Administration advised that assistance in taking evidence for criminal matters might be sought from, and rendered to, the Mainland courts pursuant to requests made by courts in Hong Kong and the Mainland. The issue and processing of such court-to-court requests were governed by the Evidence Ordinance (Cap. 8). Nevertheless, it would check and provide information on the prevailing arrangements, if any, for mutual legal assistance in criminal matters between Hong Kong and the Mainland.</p>	<p>The Administration to take action as in paragraph 3(a) of the minutes</p>
Agenda Item II – Any other business			
013328 - 013334	Chairman	Closing remarks	