

立法會
Legislative Council

LC Paper No. CB(4)105/14-15
(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 fourth meeting
held on Thursday, 17 July 2014, at 8:30 am
in Conference Room 2B of the Legislative Council Complex

Members present : Hon TAM Yiu-chung, GBS, JP (Chairman)
Hon James TO Kun-sun
Hon Cyd HO Sau-lan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP

Members absent : Hon Albert HO Chun-yan
Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK

Public Officers attending : Item I

Department of Justice

Ms Adeline WAN
Senior Assistant Solicitor General

Ms Leonora IP
Senior Assistant Law Draftsman

Ms Anita NG
Senior Government Counsel

Ms Karmen KWOK
Senior Government Counsel

Commerce and Economic Development Bureau

Ms Manda CHAN
Principal Assistant Secretary for
Commerce and Economic Development
(Commerce & Industry) SD

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) Part 12 (from clause 65 onwards) and Part 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

LC Paper No. CB(4)862/13-14(01) -- List of follow-up actions
arising from the
discussion at the meeting
on 23 June 2014

LC Paper No. CB(4)862/13-14(02) -- The Administration's
response to issues raised
by the Bills Committee
at the meeting on 23
June 2014)

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

2. The Administration was requested to –

Part 8 - Clauses 52 to 54

(a) provide information on provisions in other Ordinances and
where appropriate, in the legislation of other jurisdictions
that were similar to the drafting of the proposed new sections
12(2A)(a), 26(1), 26AA and 26AAB of the Trade
Descriptions Ordinance (Cap. 362) in respect of the

evidential burden on the accused and the burden of proof on the part of the prosecution to prove the accused's guilt beyond reasonable doubt;

- (b) having regard to the views of the Bills Committee and the Assistant Legal Adviser, re-consider whether the proposed Committee Stage amendments ("CSAs") to clauses 52 and 54 could adequately reflect the policy intent; and to explain, with reasons, its decision on the drafting of the proposed provisions relating to the burden of proof; and

Parts 12 and 13

- (c) clarify whether similar unauthorized consolidation was also found in other legislation, and if yes, explain why the irregularities had not been included in the Bill for rectification/validation.

II. Any other business

Way forward

3. The Bills Committee had completed clause-by-clause examination of the Bill and the English version of the proposed CSAs provided by the Administration, which was tabled at the meeting [LC Paper No. CB(4)949/13-14(01)].

4. The Administration agreed to provide its written response to issues arising from this meeting and a full set of proposed CSAs to the Bills Committee in due course. It was agreed that subject to members' views, if any, on the Administration's written response and proposed CSAs, the Chairman would decide whether a further meeting would need to be held. Members noted that upon completion of scrutiny of the Bill, the Bills Committee would report its deliberations to the House Committee and support the resumption of the Second Reading debate on the Bill.

5. There being no other business, the meeting ended at 10:05 am.

**Proceedings of the fourth meeting of the
Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014
on Thursday, 17 July 2014, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
Agenda Item I – Meeting with the Administration			
<i>Discussion on Part 12 (from clause 65 onwards) of the Bill</i>			
000835 – 001554	Chairman Administration Assistant Legal Adviser 2 ("ALA2")	<p><u>Clause-by-clause examination</u></p> <p><i>Clause 65</i></p> <p>Members raised no query.</p> <p><i>Clause 66</i></p> <p>In response to ALA2's enquiry, the Administration clarified that upon enactment of the proposed amendments in this Part of the Bill, future amendments to the Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) would be legally in order.</p>	
<i>Discussion on Part 13 of the Bill</i>			
001555 – 002531	Chairman Administration ALA2	<p>The Administration's briefing on Part 13 of the Bill</p> <p>In response to ALA2's enquiry, the Administration confirmed that apart from the legislation covered in Parts 12 and 13 of the Bill, so far unauthorized consolidation was also found in other legislation, namely the Resolutions of the Legislative Council (Cap. 61 sub. leg. A), Resolutions of the Legislative Council (Cap. 116 sub. leg. B) and Registration of Persons (Invalidation of Identity Cards) (Consolidation) Order (Cap. 177 sub. leg. C). They were handled differently for the following reasons –</p> <p>(a) The relevant resolutions included in the Resolutions of the Legislative Council (Cap. 61 sub. leg. A) were spent and were omitted from the Loose-leaf Edition. Therefore, no validation was proposed.</p> <p>(b) As for the Resolutions of the Legislative Council (Cap. 116 sub. leg. B), it was proposed to keep the item as it was, because the consolidated resolutions were unlikely to be textually amended.</p> <p>(c) The Registration of Persons (Invalidation of Identity Cards) (Consolidation) Order (Cap. 177 sub. leg. C) was proposed to be repealed under Part 15 of this Bill.</p>	

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		<p>The Administration was requested to confirm whether similar unauthorized consolidation was also found in other legislation, and if yes, explain why the irregularities had not been included in the Bill for rectification/validation.</p> <p><u>Clause-by-clause examination</u></p> <p><i>Clauses 67 and 68</i></p> <p>Members raised no query.</p>	<p>The Administration to take action as in paragraph 2(c) of the minutes</p>
<p><i>Discussion on the Administration's responses to issues arising from previous meetings</i></p>			
<p>002532 – 003003</p>	<p>Chairman ALA2</p>	<p><u>Administration's responses to issues arising from the meeting on 20 May 2014</u></p> <p><i>Part 7 – clause 51</i></p> <p>Members noted that the Administration had been requested to provide information on provisions in other Ordinances that were similar to the proposed new section 44(1A) of the Bill regarding the service of notice under the Unsolicited Electronic Messages Ordinance ("UEMO") (Cap.593). The Administration had advised that a similar provision was section 37ZV of the Immigration Ordinance (Cap. 115).</p> <p>ALA2 provided the following examples of "service of documents" provisions for members' reference –</p> <p>(a) According to section 8 of the Interpretation and General Clauses Ordinance (Cap. 1) regarding service by post, any documents to be served or any notice to be given by post or by registered post should be deemed to have been effected at the time at which the document or notice would be delivered in the ordinary course of post.</p> <p>(b) According to paragraph 2 of the Judiciary's Practice Directions 19.2 regarding the date of service of documents by post, delivery in the ordinary course of post should be deemed to have been effected in the case of registered post, on the fourth working day after posting; and in the case of ordinary post, on the second working day after posting.</p> <p>(c) Section 2 of the Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Cap. 487 sub. leg. C) had specified that service of a notice by ordinary post should be deemed to have been effected seven days after delivery if personal service is not practicable.</p>	

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003004 – 003515	Chairman Mr Martin LIAO Dr Priscilla LEUNG Administration ALA2	<p><u>Administration's responses to issues arising from the meeting on 23 June 2014</u></p> <p><i>Part 6</i></p> <p>Dr Priscilla LEUNG noted that according to the Administration's response, there was currently no arrangement (including memorandum of understanding) in place between Hong Kong and the Mainland China for mutual legal assistance in criminal matters. According to her recollection, it appeared that in March 1999, an arrangement had been made for mutual service of judicial documents between Hong Kong and the Mainland.</p> <p>The Administration clarified that the arrangement implemented since 30 March 1999 concerned the mutual service of judicial documents in civil and commercial proceedings between the Mainland and Hong Kong Courts, which did not cover criminal proceedings.</p> <p><i>Part 15 – clause 165</i></p> <p>Regarding members' enquiry on the use of "信號", instead of "訊號", as the Chinese rendition of the term "signals", ALA2 advised that both "信號" and "訊號" were currently used as the Chinese rendition of the term "signals" in different items of subsidiary legislation under the Road Traffic Ordinance (Cap. 374).</p> <p>Mr Martin LIAO was of the view that "信號" appeared to be a more suitable Chinese term for "signals".</p> <p>The Administration advised that "信號" was generally used as the Chinese equivalent to "signal" in the context of traffic-related legislation. However, with regard to the views from members and ALA2, it would look into the Chinese term for "signals" in the subsidiary legislation under the Road Traffic Ordinance (Cap. 374) when there was a suitable opportunity.</p>	
<i>Discussion on the proposed Committee Stage amendments provided by the Administration</i>			
003516 – 003932	Chairman Administration Dr Priscilla LEUNG	<p>The Administration's briefing on the English version of its draft proposed Committee Stage amendments ("CSAs") tabled at the meeting [LC Paper No. CB(4)949/13-14(01)].</p> <p><u>Examination of CSAs to Parts 1 and 3 of the Bill</u></p> <p>Members raised no query.</p> <p><u>Examination of CSAs to Part 4 of the Bill</u></p>	

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		<p>Members noted that section 81 of the Evidence Ordinance (Cap. 8) was also proposed to be amended under clause 13 of the Competition (Amendment) Bill 2014. CSA to clause 43 of the Bill would only be introduced if the aforesaid Bill was passed and gazetted as an Ordinance before the current Bill.</p> <p><u>Examination of CSAs to Parts 6 and 7 of the Bill</u></p> <p>Members raised no query.</p> <p>Members noted that there were no proposed CSAs to Parts 2 and 5 of the Bill.</p>	
003933 – 005335	<p>Chairman Administration Mr Martin LIAO Dr Priscilla LEUNG ALA2</p>	<p><u>Examination of CSAs to Part 8</u></p> <p>Referring to the proposed CSAs to clauses 52 and 54 (tabled at the meeting and subsequently issued vide LC Paper No. CB(4)949/13-14(01)), ALA2 made the following comments –</p> <p>(a) Both the original drafting of clauses 52 to 54 of the Bill and the CSAs proposed to clauses 52 and 54 might not adequately reflect the policy intent that, for instance, in the proposed section 12(2A)(a)(ii) of the Trade Descriptions Ordinance ("TDO") (Cap. 362), the condition of "the contrary is not proved by the prosecution beyond reasonable doubt" referred to any one, but not all, of the three conditions, i.e. (A), (B) and (C) in the proposed section 12(2A)(a)(i).</p> <p>(b) The drafting of clauses 52, 53 and 54 of the Bill in respect of the defence provisions in TDO were similar. However, the Administration had only proposed CSAs to clauses 52 and 54 but not clause 53.</p> <p>The Administration gave the following explanation –</p> <p>(a) pursuant to the judgement of the Court of Final Appeal ("CFA") in <i>Lee To Nei v HKSAR</i> (FACC 5/2011), Part 8 of the Bill, as well as the currently proposed CSAs, sought to amend section 26(4) and other similar defence provisions (including sections 12(2), 26(1) and 26(3)) in TDO to provide that these provisions imposed only an evidential burden on the accused;</p> <p>(b) it is clear from the judgement that the condition of "the contrary is not proved by the prosecution beyond reasonable doubt" referred to either (A), (B) or (C) under proposed section 12(2A)(a)(i), and not to all of the three conditions; and</p>	

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		<p>(c) the drafting of the proposed CSAs followed the drafting style of similar defence provisions in the legislation of Hong Kong. They were section 43Q(5) of the Employment Ordinance (Cap. 57), section 44(6) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and section 141(5) of the Lifts and Escalators Ordinance (Cap. 618).</p> <p>In response to Dr Priscilla LEUNG's enquiry, the Administration advised that the abovementioned provisions contained the same expression, i.e. "the contrary is not proved by the prosecution beyond reasonable doubt" to elucidate the burden of proof on the prosecution when there was more than one element constituting the defence/issue raised by the defendant.</p>	
005336 – 012309	<p>Chairman Administration Mr Martin LIAO Dr Priscilla LEUNG ALA2</p>	<p>Mr Martin LIAO and Dr Priscilla LEUNG sought further explanation on the policy intent and drafting of the proposed new sections in clauses 52 to 54 of the Bill.</p> <p>The Administration advised that –</p> <p>(a) the accused was required to adduce sufficient evidence to raise an issue constituting all the three elements (A), (B) and (C) in the proposed section 12(2A)(a)(i). If the prosecution could prove to the contrary any one of the three elements, then, the accused would not be entitled to be acquitted.</p> <p>(b) The elements which made up the issue to be raised by the accused in discharging an evidential burden varied among different Ordinances and might be set out in different formats. The drafting of the proposed section 12(2A)(a)(i) of TDO sought to reflect the CFA judgment that, for the accused to be entitled to be acquitted, an issue comprising (A), (B) and (C) must be raised, and that those three elements of the issue were to be read as a whole.</p> <p>(c) Under the CSAs currently proposed by the Administration, the three elements of the issue were set out in continuous prose instead of being itemized as (A), (B) and (C) as in the Bill.</p> <p>Mr Martin LIAO commented that –</p> <p>(a) if the accused had no reason to suspect, he would hardly make any attempt to ascertain the falsity of the goods in question. Under such circumstance, it appeared that elements (B) and (C) in the proposed section 12(2A)(a)(i) were incongruent with each other; and</p>	

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		<p>(b) therefore, it might not be appropriate to use the connective "and" to link up the three elements.</p> <p>Dr Priscilla LEUNG asked whether there were other statutory provisions relating to the evidential burden on the accused which were drafted in a similar format.</p> <p>The Administration advised that –</p> <p>(a) the drafting of the proposed CSAs to clauses 52(2) and 54 were in fact similar to the existing section 12 of TDO in which the three elements were set out in continuous prose; and</p> <p>(b) the accused was entitled to be acquitted if sufficient evidence was adduced to raise an issue comprising all the three elements and the prosecution was unable to furnish sufficient evidence to prove the accused's guilt beyond reasonable doubt.</p> <p>ALA2 suggested that to reflect the Administration's policy intent, it would be more appropriate to state explicitly in the relevant provision to the effect that the condition "the contrary is not proved by the prosecution beyond reasonable doubt" referred to any one of the three elements of the issue raised by the accused.</p> <p>Dr Priscilla LEUNG shared ALA2's view and said that consideration might be given to amending the proposed section 12(2A)(a)(ii) to read along the lines of "the contrary to any one of the above is not proved by the prosecution beyond reasonable doubt".</p> <p>In response, the Administration advised that –</p> <p>(a) the drafting suggested by ALA2 was not consistent with the drafting of similar provisions in other Ordinances. Departure from similar precedents should be avoided as far as practicable. The CSAs currently proposed to clauses 52 and 54 sufficiently and logically reflected the policy intent that the three elements of the issue to be raised should be read as a whole; and</p> <p>(b) reference had been made to the legislation in New Zealand where the drafting of similar provisions in respect of the evidential burden on the accused and the burden of proof on the prosecution was broadly the same as the drafting currently adopted in the Bill.</p>	
012310 – 013255	Chairman Administration Mr Martin LIAO Dr Priscilla LEUNG ALA2	ALA2 said that there was no difference in views about the policy intent and the CFA's ruling in respect of the provisions concerned. He maintained his strong reservation that clauses 52 and 54 of the Bill (as well as the CSAs currently proposed thereto) might not	

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		<p>adequately reflect the intended scope of the burden of proof on the prosecution (i.e. the prosecution would only need to prove any one, but not all, of the three elements to the contrary beyond reasonable doubt).</p> <p>ALA2 also noted that CSAs were only proposed to clauses 52 and 54, but not clause 53.</p> <p>Mr Martin LIAO considered that the provision relating to the burden of proof on the prosecution should be drafted in more explicit terms to reflect the policy intent.</p> <p>Dr Priscilla LEUNG considered that it was also necessary to maintain consistency in the drafting of legislation.</p> <p>The Administration noted the views and the various considerations involved, and advised that as the accused was required to adduce evidence to prove quite a number of different elements in order to raise an issue under the proposed section 26(1)(a) of TDO, it might be cumbersome, from a drafting point of view, to propose CSAs to clause 53 along the lines of those proposed to clauses 52 and 54.</p> <p>The Administration was requested to –</p> <p>(a) provide information on provisions in other Ordinances and where appropriate, in the legislation of other jurisdictions that were similar to the drafting of the proposed new sections 12(2A)(a), 26(1), 26AA and 26AAB of TDO in respect of the evidential burden on the accused and the burden of proof on the part of the prosecution to prove the accused's guilt beyond reasonable doubt; and</p> <p>(b) having regard to the views of the Bills Committee and ALA2, re-consider whether the proposed CSAs to clauses 52 and 54 could adequately reflect the policy intent; and to explain, with reasons, its decision on the drafting of the proposed provisions relating to the burden of proof on the prosecution.</p>	<p>The Administration to take action as in paragraphs 2(a) and 2(b) of the minutes</p>
013256 – 013625	Chairman Administration ALA2	<p><u>Examination of CSAs to Parts 10, 12, 13 and 14 of the Bill</u></p> <p>Members raised no query.</p> <p>Members noted that the Administration would not propose any CSAs to Parts 9, 11 and 15 of the Bill.</p>	

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Agenda Item II – Any other business			
013626 - 013748	Chairman ALA2 Dr Priscilla LEUNG	The Bills Committee agreed that subject to members' views, if any, on the Administration's written response to issues arising from this meeting and proposed CSAs, the Chairman would decide whether a further meeting would need to be held. Members noted that upon completion of scrutiny of the Bill, the Bills Committee would report its deliberations to the House Committee in due course and support the resumption of the Second Reading debate on the Bill.	

Council Business Division 4
Legislative Council Secretariat
31 October 2014