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**Urgent by fax: 2877 5029**

27 May 2014

Mr Timothy TSO  
Assistant Legal Adviser  
Legal Service Division  
Legislative Affairs Council Secretariat  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Mr Tso,

### **Statute Law (Miscellaneous Provisions) Bill 2014**

Thank you for your letter of 19 May 2014. We set out below the Administration's response to the issues raised in your letter in relation to Parts 2, 3 and 4 of the Bill.

#### **Part 2**

The Law Reform Commission ("LRC") established a Sub-committee in 2006 to review the law relating to sexual and related offences in Hong Kong. So far, the Sub-committee has issued (a) a report in February 2010 on "Sexual Offences Records Checks for Child-related Work: Interim Proposals"; (b) a report in December 2010 on "The Common Law Presumption that a Boy under 14 is incapable of Sexual Intercourse"; and (c) a consultation paper in September 2012 on "Rape and Other Non-Consensual Sexual Offences", which is the first of a series of consultation papers to be issued by the Sub-committee on the overall review of sexual and related offences. The review on the offence of non-consensual buggery (section 118A) was covered in the first consultation paper. The review is still underway and the issue of the age of consent for sexual activity will be addressed in the next (second) consultation paper which covers offences based on the protective principle. Further

consultation papers will be issued on offences based on public morality and recommendations on sentencing. The public consultation under the review will serve as a good platform for the community to consider, in a holistic manner, ways to deal with the relevant offences in accordance with the Sub-committee's guiding principles including respect for sexual autonomy, the protective principle, gender neutrality and avoidance of distinctions based on sexual orientation, as well as ways to reform the relevant law in a coordinated and comprehensive manner.

In the meantime, the Administration notes the request from the legal profession and the sexual minority community for the Administration to amend/repeal the relevant provisions of the Crimes Ordinance (Cap. 200) which have been ruled unconstitutional as early as practicable pending completion of the LRC's review. Having considered the request, the Administration proposes to amend/repeal sections 118C, 118F(1), 118F(2)(a), 118H and 118J(2)(a) of Cap. 200 to update the statute books to reflect the court rulings. In fact, these provisions struck down by the courts have no legal effect since the courts handed down their judgments. Since the court rulings, the Police and Department of Justice have not laid any charges based on the provisions which have been ruled unconstitutional.

The Administration has consulted the LRC Sub-committee, the Equal Opportunities Commission ("EOC") and the Advisory Group on Eliminating Discrimination against Sexual Minorities on the proposal. They are supportive of the proposal, and the LRC Sub-committee has also confirmed that the Sub-committee does not see any inconsistency between the proposed legislative amendments and the Sub-committee's current review.

#### Clauses 4 and 6

The entire section 118F is proposed to be repealed by clause 4 because section 118F(1), which is the main provision of the offence, was declared unconstitutional in *S for J v Yau Yuk Lung Zigo and Another*, FACC 12/2006. Section 118F(2)(a), which provides an interpretation of section 118F(1), was declared unconstitutional in *Leung TC William Roy v S for J*, HCAL 160/2004.

Section 118J(2)(a) is proposed to be repealed by clause 6 as it was declared unconstitutional in *Leung TC William Roy v S for J*, HCAL 160/2004. We do not propose to repeal the whole of section 118J as section 118J(1), the main provision of the offence, was not involved in the relevant court cases. That said, section 118J is among the sexual offences covered in the comprehensive review being conducted by the LRC.

### Part 3

#### Clauses 14, 17, 22 and 23

The aforementioned clauses are amendments proposed to the Sex Discrimination Ordinance (Cap. 480) (“SDO”). The reasons for these technical amendments are as follows –

*Clause 14(1): repeal section 12(2)(g); Clause 17(2): repeal section 57(1)(ii); Clause 22: repeal Schedule 3*

Section 12 provides for exceptions to sex discrimination where sex is a genuine occupational qualification. Section 12(2)(g) provides for exceptions “where the job needs to be held by a man because of restrictions imposed by a provision specified in Schedule 3”. All Regulations stated in Schedule 3 have been amended and references to “woman” or “female” have been removed. Therefore, it would no longer be necessary to provide for exceptions vide Schedule 3 of the SDO. In this connection, we have sought agreement from the relevant Bureau/Department to remove the relevant provisions in Schedule 3, and consequently the whole Schedule is proposed to be repealed. We also propose to remove the relevant sections which specifically refer to Schedule 3, and such provisions include section 12(2)(g) and section 57(1)(ii).

*Clause 23(2): repeal the definition of “reproductive technology procedure” in section 1, Part 1 of Schedule 5*

Insofar as Schedule 5 is concerned, the term “reproductive technology procedure” only appears in item 4 of Part 2. As item 4 of Part 2 is proposed to be repealed by clause 23(8), the definition of “reproductive technology procedure” in section 1 of Part 1 would become obsolete and should also be repealed.

*Clause 23(5): repeal paragraphs (c) and (d) of column 2, item 1, Part 2 of Schedule 5*

Paragraphs (c) and (d) of item 1 provide for exceptions to the SDO so far as reserving office for men in the Police Tactical Unit (PTU) and the training in the use of weapons is concerned. It has been confirmed by the relevant Department that there are currently no offices falling within the PTU that are reserved for male officers. Also, the same training on use of weapons is provided to male and female officers. Therefore, these items

providing for exceptions to the SDO are no longer applicable and are proposed to be repealed.

*Clause 23(8): repeal items 4, 5 and 8 of Part 2 of Schedule 5*

For items 4 (exceptions arising from reproductive technology procedure) and 5 (exceptions arising from adoption), the same exceptions have already been provided in sections 56B and 56C of the SDO. As sections 56B and 56C have already covered items 4 and 5, we therefore propose repealing these two items.

For item 8, the Royal Hong Kong Auxiliary Police Force (Pensions) Regulations have been repealed in 1997. Therefore, item 8 (providing exceptions for the Regulations) has become obsolete and should be repealed.

Clause 14(2)

We agree that “(g)” in the Chinese text of section 12(4)(a) of the SDO should be repealed. This will be followed up as a Committee Stage Amendment (“CSA”) to the Bill.

Clause 33(2)

Section 41 of the Disability Discrimination Ordinance (Cap. 487) defines ‘discriminatory practice’ and provides that the EOC may bring proceedings in accordance with a number of provisions (including section 73 which deals with issue of enforcement notices) of Cap. 487, but a reference to section 41 is missing in section 73 regarding the latter's applicability. This amendment, proposed by the EOC, seeks to add a reference to section 41 in section 73 for the sake of clarity and completeness.

**Part 4**

We will monitor the progress of the scrutiny of our Bill and the Competition (Amendment) Bill 2014 closely. CSAs will be proposed either to our Bill or to the Competition (Amendment) Bill 2014 to ensure that the proposed amendments to section 81 of the Evidence Ordinance (Cap. 8) by both Bills will be properly effected.

We will let you have the Administration's response to the other issues raised in your letter of 19 May 2014 on Parts 1, 5, 8, 11, 12, 13 and 15

of the Bill as soon as they are ready.

Yours sincerely,



( Ms Adeline Wan )  
Senior Assistant Solicitor General  
(General Legal Policy)

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