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17 June 2014

Mr Kwong Kam Fai
Clerk to Bills Committee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

via Ms Adeline Wan, SASG/GLP

Dear Mr Kwong,

**Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2014**

Follow-up to the meeting on 27 May 2014

Thank you for your letter of 29 May 2014 forwarding the list of issues arising from the second meeting on 27 May 2014.

I attach a copy of the English version of the paper setting out the Administration's response to the issues raised in the list of follow-up actions. The Chinese version will be sent to you as soon as possible.

Yours sincerely,

(Ms Anita Ng)

Senior Government Counsel
Legal Policy Division

cc Mr Timothy Tso, ALA
Mr Gary Poon, AA/SJ

**Legislative Council Bills Committee on
Statute Law (Miscellaneous Provisions) Bill 2014**

Follow-up to the second meeting on 27 May 2014

Purpose

This paper sets out the Administration's response to the issues raised at the second meeting of the Bills Committee held on 27 May 2014.

Part 3

Clause 14(2)

Question (a) - provide in due course the proposed Committee Stage Amendment to repeal “、(g)” in the Chinese text of section 12(4)(a) of the Sex Discrimination Ordinance (Cap. 480);

2. We agree that “、(g)” in the Chinese text of section 12(4)(a) of the Sex Discrimination Ordinance (Cap. 480) should be repealed and will provide the proposed Committee Stage Amendment in due course.

Part 4

Clause 43

Question (b) - note that as section 81 of the Evidence Ordinance (Cap. 8) is also proposed to be amended under clause 13 of the Competition (Amendment) Bill 2014, if the aforesaid Bill is passed and gazetted as an Ordinance before the current Bill, then, clause 43 of the Bill may need to be amended;

3. We will monitor the progress of the scrutiny of our Bill and the Competition (Amendment) Bill 2014 closely. Committee Stage Amendments 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.

Part 5

Clauses 45 - 47

Question (c) - explain why “any notarial act done before a diplomatic or consular officer of the People’s Republic of China outside the People’s Republic of China” is excluded from the proposed definition of “notarial act” in clauses 45 to 47;

4. Section 10 of the Oaths and Declarations Ordinance (“ODO”) provides that:

‘An oath, affidavit, affirmation and notarial act administered, sworn, affirmed, or *done before a diplomatic or consular officer of the People’s Republic of China outside the People’s Republic of China shall be as effectual as if duly administered, sworn, affirmed or done by or before any lawful authority in Hong Kong.*’ (emphasis added)

5. We take the view that the term “lawful authority” in section 10 of the ODO is likely to include a “notary public” who is qualified to practise under section 40D of the Legal Practitioners Ordinance (Cap. 159).

6. Since a notarial act done before a diplomatic or consular officer of the PRC outside the PRC is regarded as having the same effect as if duly done before a notary public in Hong Kong under section 10 of the ODO, such a foreign notarial act would be received as prima facie evidence in civil proceedings in the courts of Hong Kong after the enactment of Part 5 of the Bill. This would have the inadvertent effect of changing the substantive law of evidence relating to the admission of overseas notarial acts executed by foreign notaries, which is apparently inconsistent with the policy intent of Part 5 of the Bill.

7. In order to avoid the inadvertent effect, we propose that “any notarial act done before a diplomatic or consular officer of the People’s Republic of China outside the People’s Republic of China as referred to in section 10 of the Oaths and Declarations Ordinance (Cap. 11)” be excluded from the definition of “notarial act” in clauses 45 - 47 of the Bill.

Part 14

Question (d) - having regard to the amendments to the Chinese titles of “Commissioner of Customs and Excise” , “Deputy Commissioner of

Customs and Excise” and “Assistant Commissioner of Customs and Excise” by repealing the expression “香港”, advise, where practicable, whether there are provisions in other Ordinances that would also require similar amendments to standardize the references to the Chinese titles of public officers;

8. It has not come to our attention that similar amendments to other provisions are required to standardize the references to the Chinese titles of other public officers.

Division 48

Question (e) - advise whether the names of “Customs and Excise Service Children’s Education Trust Fund” and “香港海關人員子女教育信託基金” have been duly registered and recognized as the official English and Chinese names respectively of the Fund; and hence, cannot be easily changed even if “香港” appears in the Chinese name but not in the English name; and

9. Section 3(1) of the Customs and Excise Service Children’s Education Trust Fund Ordinance (Cap. 551) established a fund known as the “Customs and Excise Service Children’s Education Trust Fund” (香港海關人員子女教育信託基金). Both the Chinese and English names provided for in that section have been duly registered. We therefore would not propose changing the name of the fund.

Part 15

Clause 162

Question (f) - clarify whether it is the intention that the arrangements as set out in proposed rule 14A of Order 24, Rules of the District Court (Cap. 336 sub.leg. H) would also apply to the situation in which a document has been read to or by the judge in Chamber.

10. Order 1, rule 4(2) of the Rules of the District Court (Cap. 336H) provides that “[i]n these Rules, unless the context otherwise requires, ‘the Court’ means the District Court or any judge thereof whether sitting in court or in chambers or the Registrar or any master”. Pursuant to this rule, Order 24, rule 14A applies equally to the District Court and chambers.

11. There are different modes of hearing: (a) in open court; (b) in chambers (open to the public); (c) in chambers (not open to the public); and (d) in camera. Open court hearing is the general mode of conducting hearings in Hong Kong where the public and the press are entitled to be admitted. Before June 2005, “in chambers” meant in private, behind closed doors in proceedings which the public and press do not have a right to be admitted. “In camera” means not only hearing in private behind closed doors but also a hearing intended to be in secret.

12. On 1st June 2005, the Judiciary published Practice Directions (“PDs”) (namely, PDs 25.1 and 25.2) with the objective of opening up chambers hearings in civil proceedings as much as possible and to allow such hearings to be reported just like hearings in open court. Under the PDs, chambers hearings in civil proceedings in the High Court, the District Court, the Family Court and the Lands Tribunal will generally be open to the public and the hearings may be reported in the same way as hearings in open court. There are only two kinds of exceptions. Firstly, chambers hearings will not be open to the public where this is required by statute, for example, in adoption proceedings. Secondly, the proceedings would usually not be open to the public if having regard to their nature, the reasons laid down in Article 10 of the Hong Kong Bill of Rights Ordinance (Cap. 383) are satisfied. Such proceedings include matters relating to children and financial provisions in matrimonial proceedings, ex parte applications for injunctions and similar orders.

13. If a document has been read to or by a judge or a master in chamber (open to the public), the hearing can be reported in the same way as hearings in open court. As such, Order 24, rule 14A of Cap. 336H applies equally to proceedings in open court as well as in chambers (open to the public). However, as the phrase “in open court” is adopted in this rule, the arrangements as set out in Order 24, rule 14A would not apply to the situation where a document has been read to or by a judge/master in chambers (not open to the public) or in camera.

Department of Justice
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