

立法會

Legislative Council

LC Paper No. CB(4)186/14-15

Ref : CB4/BC/3/13

Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014

Purpose

This paper reports on the deliberations of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014 ("the Bill").

The Bill

2. The Bill is an omnibus bill proposing amendments to various Ordinances. It comprises 15 Parts and 173 clauses. The major proposed amendments are as follows –

- (a) Part 2 – to repeal and amend certain offence provisions in the Crimes Ordinance (Cap. 200) ("CO") that were declared to be unconstitutional by the courts in *Leung TC William Roy v Secretary for Justice* (HCAL 160/2004 and CACV 317/2005) and *Secretary for Justice v Yau Yuk Lung Zigo and Another* (FACC 12/2006);
- (b) Part 3 – to make miscellaneous amendments to the Sex Discrimination Ordinance (Cap. 480), the Disability Discrimination Ordinance (Cap. 487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602) for the purposes of, inter alia, enabling the service of enforcement notices by the Equal Opportunities Commission ("EOC") and providing protection to the members and staff of EOC against certain liability;
- (c) Part 4 – to amend the Evidence Ordinance (Cap. 8) ("EO") and the Lands Tribunal Ordinance (Cap. 17) ("LTO") to clarify the powers of members and temporary members of the Lands Tribunal;
- (d) Parts 5 and 6 – to amend EO, the Rules of the High Court (Cap. 4 sub. leg. A), the Rules of the District Court (Cap. 336 sub. leg. H)

("Cap. 336H") and the Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) ("MLACMO") relating to admissibility of evidence in court proceedings;

- (e) Part 7 – to amend the Unsolicited Electronic Messages Ordinance (Cap. 593) ("UEMO") to add further modes for the service of specified notices issued by the Communications Authority ("CA") under section 44 of UEMO;
- (f) Part 8 – to amend certain defence provisions under the Trade Descriptions Ordinance (Cap. 362) ("TDO") to make it clear that they impose only an evidential burden on the accused;
- (g) Part 9 – to amend the Building Management Ordinance (Cap. 344) ("BMO") to replace the existing requirement of a statutory declaration under certain provisions by the requirement of a written statement;
- (h) Part 10 – to amend 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");
- (i) Part 11 – to amend LPO and the 1997 Ordinance so as to empower the Council of the Law Society of Hong Kong ("the Law Society") to revoke and restore a suspension of a solicitor's practice or a foreign lawyer's registration pending a decision of the Solicitors Disciplinary Tribunal; and
- (j) Parts 12 to 15 – to make miscellaneous and technical amendments to various Ordinances or subsidiary legislation for different purposes, which include consequential amendments that were omitted in previous amendment exercises, correcting cross references in certain provisions, correcting certain technical consolidation irregularities in a few consolidated instruments and standardizing the references to the Chinese titles of "Commissioner of Customs and Excise", "Deputy Commissioner of Customs and Excise" and "Assistant Commissioner of Customs and Excise".

The Bills Committee

3. At the meeting of the House Committee held on 2 May 2014, Members agreed to form a bills committee to scrutinize the Bill. The membership list of

the Bills Committee is at the **Appendix**. Under the chairmanship of Hon TAM Yiu-chung, the Bills Committee held four meetings to discuss the Bill with the Administration.

Deliberations of the Bills Committee

4. In principle, the Bills Committee does not object to the proposed amendments under various Parts of the Bill. The major views and concerns expressed by members are summarized in the ensuing paragraphs.

Part 2 - Proposed amendments to CO (clauses 3 to 12)

The unconstitutional provisions

5. In *Leung TC William Roy v Secretary for Justice* (HCAL 160/2004), the applicant sought declarations that sections 118C (homosexual buggery with or by man under 21), 118F(2)(a) (homosexual buggery committed otherwise than in private), 118H (gross indecency with or by man under 21) and 118J(2)(a) (gross indecency by man with man otherwise than in private) of the CO were invalid and inconsistent with the Basic Law and the Hong Kong Bill of Rights ("HKBOR"). The respondent conceded that sections 118H, 118J(2)(a) and 118F(2)(a) were unsustainable in law, but argued that section 118C was constitutional and valid. The Court of First Instance ("CFI") ruled that section 118C, together with the three other sections challenged, discriminate on the basis of sexual orientation. Sections 118C and 118H (to the extent that they apply to a man aged 16 or above and under 21 years of age) and sections 118F(2)(a) and 118J(2)(a) of the CO were ruled to be inconsistent with Articles 25 and 39 of the Basic Law and Articles 1, 14 and 22 of the HKBOR and are therefore unconstitutional. The declarations sought by the applicant were granted. The Secretary for Justice subsequently appealed against the decision of the CFI insofar as section 118C of the CO is concerned. The Court of Appeal (in CACV 317/2005) upheld the decision of the CFI.

6. In *Secretary for Justice v Yau Yuk Lung Zigo and Another* (FACC 12/2006), the Court of Final Appeal ("CFA") ruled that equality before the law is a fundamental human right and discrimination on the ground of sexual orientation would be unconstitutional. CFA declared that section 118F(1) (homosexual buggery committed otherwise than in private) of the CO was unconstitutional for infringing the respondents' right to equality guaranteed under Article 25 of the Basic Law and Article 22 of the HKBOR.

7. Concern has been expressed about the long time taken by the Administration in introducing the necessary amendments to CO notwithstanding that the relevant cases were decided in 2006 and 2007. According to some

members, since the relevant legislation has not been amended, many homosexual persons and even some frontline police officers have been under the misconception that it is unlawful for homosexual men aged 16 or above and under 21 years of age to commit buggery.

8. The Administration has advised that in July 2006, the Law Reform Commission ("LRC") set up the Review of Sexual Offences Sub-committee ("the Subcommittee") to review the law relating to sexual and related offences in Hong Kong. Due to widespread public concern about the need to protect children from sexual abuse, the Subcommittee had spent some time in studying the establishment of an administrative scheme on sexual conviction record check and made corresponding recommendations in 2010. Thereafter, the Subcommittee continued its review on sexual and related offences. Having considered the request from the legal sector and the sexual minority community, the Administration has decided to proceed to amend/repeal sections 118C, 118F(1), 118F(2)(a), 118H and 118J(2)(a) of CO ahead of the completion of the Subcommittee's review. The Administration has confirmed that these provisions struck down by the courts have ceased to have legal effect. Since the handing down of the judgements, the Police and the Department of Justice have not laid any charges based on these provisions. According to the Security Bureau, frontline police officers have been reminded that the provisions in question no longer have any legal effect.

9. The Bills Committee notes that the existing section 118F of CO (homosexual buggery committed otherwise than in private) and the existing section 118J (gross indecency by man with man otherwise than in private) are similar in structure. Based on the legal analysis of the cases mentioned in paragraph 5 above, it is possible that section 118J may also be unconstitutional. However, the Administration has proposed to repeal the entire section 118F under clause 4 of the Bill, but only section 118J(2)(a) under clause 6.

10. On the reasons for not repealing both sections in their entirety, the Administration has explained that section 118F(1), which is the main provision of the offence, was declared unconstitutional in *Secretary for Justice v Yau Yuk Lung 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 Secretary for Justice* (HCAL 160/2004 and CACV 317/2005). As regards section 118J(2)(a) of CO, it was declared unconstitutional in *Leung TC William Roy v Secretary for Justice* (HCAL 160/2004 and CACV 317/2005). The Administration has not proposed to repeal the entire section 118J because section 118J(1), the main provision of the offence, was not involved in the relevant court cases. In addition, repealing section 118J would in effect increase the maximum penalty from two years' imprisonment under section 118J to seven years' imprisonment under the common law offence of "outraging public decency". The Administration considers that the penalty is an issue of

concern and this should be included in the review by the LRC. Section 118J is among the sexual offences covered in the comprehensive review by the Subcommittee of LRC.

Other sexual offences under CO

11. A member considers that some other existing provisions relating to sexual offences under CO are gender specific or discriminatory on the ground of sexual orientation and should be amended/repealed without delay. There is concern about the long time taken by LRC in conducting its review and putting up recommendations.

12. As explained by the Administration, the Subcommittee of LRC has taken forward the review on the law relating to sexual and related offences in stages. A consultation paper on "Rape and Other Non-Consensual Sexual Offences" issued in September 2012, which contains key proposals such as the repeal of the existing section 118A of CO for public consultation, was the first of a series of consultation papers to be issued by the Subcommittee. The Subcommittee will adopt a comprehensive and coordinated approach to reform the relevant law and put up recommendations. However, owing to the wide scope of issues involved, the Subcommittee of LRC has advised that it is not practicable to specify a definite timetable for completion of the review.

Part 3 – Proposed amendments to the four anti-discrimination Ordinances (clauses 13 to 42)

13. The Bills Committee notes the proposed amendments to the four anti-discrimination Ordinances and the related amendments to the Personal Data (Privacy) Ordinance (Cap. 486), and that the Administration will propose a Committee Stage amendment ("CSA") to clause 14(2) to make a textual amendment to the Chinese text.

Part 4 - Proposed amendments to EO and LTO (clauses 43 to 44)

14. The Bills Committee notes that section 81 of EO is proposed to be amended under clause 43 of the Bill, and that the same section is also proposed to be amended under clause 13 of the Competition (Amendment) Bill 2014 currently being scrutinized by another bills committee. Members note that if the Competition (Amendment) Bill 2014 is passed and gazetted as an Ordinance before the Bill, then, the Administration will move a CSA to make a consequential amendment to clause 43. Since the Competition (Amendment) Bill 2014 was passed at the Council meeting of 12 November 2014 and gazetted as an Ordinance on 21 November 2014, the Administration will move a CSA to clause 43 of the Bill to effect the proposed amendments to section 81 of EO.

Part 5 - Proposed amendments to the Rules of the High Court (Cap. 4 sub. leg. A), EO and Cap. 336H (clauses 45 to 47)

15. Question has been raised as to 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 of the Bill.

16. The Administration refers to section 10 of the Oath and Declarations Ordinance (Cap. 11) ("ODO") and explains that the term "lawful authority" in the aforesaid section is likely to include a "notary public" who is qualified to practise under section 40D of LPO. Since a notarial act done before a diplomatic or consular officer of the People's Republic of China ("PRC") outside PRC is regarded as having the same effect as if duly done before a notary public in Hong Kong under section 10 of ODO, such a foreign notarial act would be received as prima facie evidence in civil proceedings in the courts of Hong Kong after Part 5 of the Bill has been enacted. 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. Hence, it is necessary to propose the above exclusion to the definition of "notarial act" under clauses 45 to 47 of the Bill.

Part 6 - Proposed amendments to EO and MLACMO (clauses 48 to 50)

17. Regarding the use of the Chinese expressions of "宗教式誓章" and "非宗教式誓詞" in the proposed sections under clauses 48 to 50 of the Bill, the Administration has responded to members that "宗教式誓章" and "非宗教式誓詞" are also used in ODO and LPO¹ as the Chinese equivalents to "affidavit" and "affirmation" respectively.

18. The Bills Committee notes that the Administration will move a CSA to improve the Chinese text of the proposed section 77F(2)(c)(iii) of EO. Some members have raised concern on what constitutes "unfairness" in the context of "...the court is satisfied that no unfairness is likely to occur in the criminal proceedings...." in the proposed section. According to the Administration, the term "unfairness" is not defined in the proposed section 77F(2)(c)(iii). However, the principles applicable to the criminal court's power to exclude evidence at common law when seeking to preserve a fair trial would be relevant. It has further advised that the requirement of a fair trial for the accused involves the observance of a number of principles including the accused person's right of silence, and also the principle that no person can be convicted except upon the probative effect of admissible evidence. To ensure a fair trial for the accused, the court may exclude admissible evidence the reception of which will

¹ See sections 7(4) and 9 of ODO and section 7A of LPO.

compromise these principles, such as evidence which is unreliable, and evidence the prejudicial effect of which is out of proportion to its probative value. Furthermore, the court may also exclude evidence obtained in breach of rights contained in the Basic Law.

19. In response to some members' enquiry, the Administration has confirmed that currently, there is no arrangement (including memorandum of understanding) between the Hong Kong Special Administrative Region ("HKSAR") and the Mainland China for mutual legal assistance in criminal matters. The sole mechanism under which HKSAR may seek and render assistance in obtaining evidence for use in criminal proceedings instituted in HKSAR and the Mainland China is the mechanism under Parts VIII and VIIIA of EO.

Part 7 - Proposed amendments to UEMO (clause 51)

20. Under the existing section 44 of UEMO, the only means that a specified notice may be served on a person is by delivering it by registered post to the person's usual or last known place of abode or business. According to CA, in the course of performing its functions, it has encountered certain enforcement difficulties. For instance, an enforcement notice sent to the person concerned by registered post was returned by the Post Office as no one received the post after a specified period. It was also commonly found that the computer systems for sending unsolicited electronic messages were installed and located in data centres, which did not accept registered posts for tenants. These circumstances might be regarded as "evidence to the contrary" that the notice had been successfully served in accordance with the requirement under section 44(1) of UEMO. As informed by CA, up to 31 December 2013, a total of 23 enforcement notices have been issued under section 38 of UEMO since 2009, of which 15 could not be served.

21. Under the proposed section 44(1) of UEMO, a specified notice issued by CA may be served on a person by, in addition to registered post, delivering it by hand to that person, leaving it at or sending it by ordinary post to the person's usual or last known place of abode or business, with the presumed timing of service of the notice set out in the proposed section 44(1A). Some members are concerned that the modes of service of notices under the proposed section 44(1A) have been introduced for the purpose of expediency. The Administration has advised that a similar "service of notices" provision can be found in section 37ZV of the Immigration Ordinance (Cap. 115).

22. Some members have sought explanation on what constitutes "evidence to the contrary" that the notice is presumed to have been successfully served as stated in the proposed section 44(1A) of UEMO. According to the Administration, whether there is "evidence to the contrary" would need to be considered on a case-by-case basis. For instance, if the person concerned has

genuinely moved to a new place of business but has not yet updated his registered business address in time when a specified notice is delivered to his last known place of business (i.e. his old address), the person may adduce facts that can be considered as "evidence to the contrary" that the notice has been served on him. The Administration has also clarified that the proposed sections 44(1) and 44(1A) of UEMO should be read as a whole and the condition "in the absence of evidence to the contrary" is applicable to the whole presumption. To improve the presentation of the presumption and to align with the Chinese text, the Administration has proposed a CSA to amend the English text of the proposed section 44(1A).

23. On the feasibility of serving the specified notices under UEMO by electronic means such as via e-mail, the Administration has advised that according to CA, the senders of unsolicited electronic messages usually rely on the service of third party e-mail systems for receiving incoming e-mails where some of these e-mails may be blocked due to various reasons. Hence, from the evidential point of view, it would be more prudent to serve the notices by hand, ordinary or registered post instead of via e-mail which may risk non-delivery in some circumstances.

Part 8 - Proposed amendments to TDO (clauses 52 to 54)

24. The Bills Committee notes that as declared in the judgement of CFA in *Lee To Nei v HKSAR* (FACC 5/2011) and *Lau Hok Tung and Others v HKSAR* (FACC 7/2011), section 26(4) of TDO must be read down as imposing merely an evidential burden on the accused, with the persuasive burden remaining throughout on the prosecution. Part 8 of the Bill proposes to amend section 26(4) and other similar defence provisions, including sections 12(2)(a), 26(1) and 26(3) of TDO, to provide that these provisions impose only an evidential burden on the accused.

25. Notwithstanding the above, the accused would still have to adduce or be able to point to credible evidence to raise a reasonable doubt as to his guilt. For instance, under the proposed section 12(2A)(a)(i) of TDO (clause 52(2) of the Bill), the accused has to adduce sufficient evidence to raise an issue that he (A) did not know; (B) had no reason to suspect; **and** [*emphasis added*] (C) could not with reasonable diligence have ascertained that the goods are goods to which a false trade description or forged trade mark is applied. Where such evidence exists, it would be for the prosecution to prove the accused's guilt beyond reasonable doubt.

26. Question has been raised as to whether the condition of "the contrary is not proved by the prosecution beyond reasonable doubt" in the proposed section 12(2A)(a)(ii) of TDO refers to all of (A), (B) and (C), or any one of (A), (B) or (C) in the proposed section 12(2A)(a)(i). The Administration has advised that

pursuant to the CFA judgement, the condition that "the contrary is not proved by the prosecution beyond reasonable doubt" requires the prosecution to satisfy the court beyond reasonable doubt in respect of any one of (A), (B) or (C), and not all of them.

27. Members have noted that in the opinion of the legal adviser to the Bills Committee, the proposed section 12(2A)(a), as currently drafted, may not adequately reflect the policy intent that under the proposed section 12(2A)(a)(ii), the prosecution is only required to prove to the contrary beyond reasonable doubt in respect of any one, but not all, of the three conditions (i.e. (A), (B) or (C)) which make up the issue raised by the accused under the proposed section 12(2A)(a)(i). The legal adviser has remarked that as the connective "and" is used in the proposed section 12(2A)(a)(i), it may be inferred that the burden of proof imposed on the prosecution under the proposed section 12(2A)(a)(ii) should also cover all of the three conditions, i.e. (A), (B) and (C). There is similar concern about the drafting of the proposed provisions relating to the prosecution's burden of proof under the proposed sections 26(1), 26AA and 26AAB of TDO.

28. From the drafting perspective, the Administration has advised that with the use of the connective "and", the three conditions (A), (B) and (C) listed in the proposed section 12(2A)(a)(i) of TDO should be read as a whole. The condition of "the contrary is not proved by the prosecution beyond reasonable doubt" in the proposed section 12(2A)(a)(ii) seeks to reflect the CFA judgement that as long as the prosecution can adduce evidence to prove either (A), (B) or (C) to the contrary beyond reasonable doubt, the reasonable doubt raised by the accused will be dispelled.

29. At one stage, the Administration has submitted for members' consideration draft CSAs to clause 52(2) (i.e. the proposed section 12(2A)(a)) and clause 54 (i.e. the proposed sections 26AA and 26AAB) of the Bill in which a different drafting format was used. Under this revised format, the three conditions which make up the issue to be raised by the accused are set out in continuous prose instead of being itemized as (A), (B) and (C)/(i), (ii) and (iii) to better reflect the policy intent that the three conditions should be read as whole. The Administration has not proposed to revise the drafting format of clause 53 (i.e. the proposed section 26(1)) for the reason that a different set of elements are involved for raising an issue under the proposed section 26(1)(a).

30. The legal adviser to the Bills Committee maintains his reservation that clauses 52 to 54 of the Bill (as currently drafted), and the draft CSAs to clauses 52(2) and 54, may not adequately reflect the policy intent regarding the burden of proof on the prosecution. The legal adviser however defers to the drafting expertise of the Administration. Meanwhile, the Administration has informed the Bills Committee that there are other existing legislative provisions which

follow the same drafting style as the proposed sections 12(2A)(a), 26(1), 26AA and 26AAB of TDO². These provisions also require the person charged to raise an issue comprising more than one element and those elements are linked up by the connective "and". The same expression i.e. "the contrary is not proved by the prosecution beyond reasonable doubt" is used to elucidate the burden of proof on the prosecution to disprove any one of the elements beyond reasonable doubt.

31. On some members' suggestion to specify explicitly that the condition "the contrary is not proved by the prosecution beyond reasonable doubt" refers to any one of the three conditions of the issue raised by the accused, the Administration has advised that this is not consistent with the drafting of similar provisions in other Ordinances. In this connection, some members agree that maintaining drafting consistency would be important. For consistency across the statute book and in the light of the CFA ruling, the Administration has come to the view that the drafting of the proposed sections 12(2A)(a), 26(1), 26AA and 26AAB in clauses 52 to 54 of the Bill is appropriate and can adequately reflect the policy intent. Incidentally, it will propose minor CSAs to the proposed sections 12(2A), 26AA and 26AAB of TDO to refine the drafting. The Bills Committee takes note of the opinions of its legal adviser and the Administration, and has not raised further comments on the proposed provisions.

Part 9 - Proposed amendments to BMO (clauses 55 to 56)

32. Members have sought explanation on the policy intent of the existing requirement under BMO on a member of the management committee of an owners' incorporation to make a statutory declaration and the rationale for introducing the proposed amendments. The Administration has advised that the existing requirement was introduced when BMO was amended in 2007. As members of the management committee of an owners' incorporation play a key role in building management, they should be required to make a statutory declaration that they do not fall within any of the categories of ineligible persons specified in Schedule 2 to BMO. However, in the light of operational experience, the requirement is found to be too stringent. The proposed amendments seek to replace the requirement of a statutory declaration with the requirement of a written statement.

33. On the commencement provision, members note that according to clause 1(3) in Part 1 of the Bill, Part 9 will come into operation on the expiry of one month after the day on which the enacted Ordinance is published in the Gazette. The Administration has advised that a member of the management committee is

² The examples referred to by the Administration include 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). However, the Bills Committee has noted that the conditions involved in these provisions are less complicated than those under the provisions of TDO.

given a period of 21 days from the date of his/her appointment to lodge a written statement with the Secretary of the management committee and the Secretary should cause the written statement to be lodged with the Land Registrar within 28 days after receipt. The proposed commencement date is to allow sufficient lead time for these procedures. Publicity on the new requirement will also be made during this one-month period. The Administration will move a CSA to the English text of clause 1(3) of the Bill regarding the commencement date of Part 9 of the Bill so as to reflect more clearly the policy intent.

Part 10 - Proposed amendment to the 1997 Ordinance (clause 57)

34. The Bills Committee notes that the existing provisions of LPO, read together with Schedule 1 to the 1997 Ordinance³, would have the effect of referring to "legal practice entities" (which is defined to include solicitor corporations) as trustees or co-trustees of a controlled trust. The Law Society has proposed to amend Schedule 1 to the 1997 Ordinance to retain the existing definition of controlled trust (which refers to solicitors or foreign lawyers, rather than legal practice entities, as trustees or co-trustees) for the purposes of Part IIA of and Schedule 2 to LPO. In other words, the law prior to the 1997 Ordinance is proposed to be reinstated so that only solicitors or foreign lawyers can become trustees or co-trustees of a controlled trust.

35. The Bills Committee notes that when the Panel on Administration of Justice and Legal Services was consulted on the Bill in December 2013, there was a query relating to the policy justification of the amendment proposed by the Law Society. According to the Administration, the Law Society had advised that the policy intent was to reinstate the law prior to the 1997 Ordinance so that only solicitors or foreign lawyers could be trustees or co-trustees of a trust under the existing provisions of LPO. On being further consulted, the Law Society came to the view that the currently proposed amendment may not achieve the intended objectives. It confirmed in May 2014 that it would not proceed with the proposed amendment.

36. Noting that pursuant to the Law Society's decision, the Administration will move a CSA to delete Part 10 of the Bill, concern has been raised as to whether the proposed amendment had been thoroughly considered before being introduced. The Administration has indicated that as the proposed amendment concerns the professional practice of solicitors and foreign lawyers, the Law Society, as the professional body, is in the best position to consider whether the proposed amendment should be proceeded with. The Administration respects the Law Society's decision on the matter and would follow up with the Law Society if necessary, especially when public interest is involved.

³ Schedule 1 to the 1997 Ordinance contains consequential amendments to LPO relating to solicitor corporations and has not yet come into operation.

Part 11 - Proposed amendments to LPO and the 1997 Ordinance (clauses 58 to 59)

37. The Bills Committee notes that the proposed amendments under Part 11 seek to empower the Council of the Law Society to revoke and restore a suspension of a solicitor's practice or a foreign lawyer's registration pending a decision of the Solicitors Disciplinary Tribunal. On whether there was any court decision leading to the legislative amendments, the Administration has advised that the proposed amendments have been initiated by the Law Society to provide its Council with greater flexibility in handling the suspension imposed on solicitors and foreign lawyers in the light of new developments during the interim period before the Solicitors Disciplinary Tribunal makes a decision on whether the solicitor or foreign lawyer is fit to practise.

38. On the appeal mechanism, if any, against the Council's decision to suspend a solicitor's practice or a foreign lawyer's registration, and its decision to revoke/restore such suspension, the Administration has advised that the Council's decision is an interim measure pending the Tribunal's decision and is not subject to any appeal mechanism. A person aggrieved by the Council's decision may consider applying for judicial review.

Part 12 – Proposed amendments relating to Specification of Public Offices (clauses 60 to 66) and Part 13 - Validation in relation to consolidated instruments (clauses 67 to 68)

39. Consolidated instruments were previously published in the Revised Edition of the Laws of Hong Kong ("Revised Edition"), which contained the legislation as at 31 December 1989. The Bills Committee notes that 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. In the early 1990s, consolidated instruments were migrated from the Revised Edition to the Loose-leaf edition of the Laws of Hong Kong ("Loose-leaf Edition"). However, there is no similar consolidation power under the Laws (Loose-leaf Publication) Ordinance 1990 but the consolidation practice has continued in respect of a number of consolidated instruments in the Loose-leaf Edition.

40. As explained by the Administration, an unauthorized consolidated entry in the Loose-leaf Edition does not legally form part of the consolidated instrument concerned. The validity of any subsequent amendment to an unauthorized consolidated entry as appearing in the Loose-leaf Edition may technically be irregular as the entry is arguably not part of the instrument. Moreover, since the Chinese text of an Ordinance was declared authentic under section 4B of the Official Languages Ordinance (Cap. 5) on the basis of the English text of the Ordinance published in the Loose-leaf Edition, the authentic Chinese text of an unauthorized consolidated entry may also be irregular.

41. After the unauthorized consolidation practice had come to the attention of the Administration in 1997, it ceased to consolidate the specifications made under section 43 of the Interpretation and General Clauses Ordinance (Cap. 1) ("IGCO") to the Schedule to the Specification of Public Offices (Cap. 1 sub. leg. C) ("Cap. 1C"). 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 officers.

42. Part 12 of the Bill amends Cap. 1C in order to consolidate, update and rearrange the specifications made under section 43 of IGCO. It also rectifies the above-mentioned consolidation irregularity in respect of Cap. 1C. Part 13 of the Bill rectifies a similar consolidation irregularity in respect of two items of subsidiary legislation, namely the Antiquities and Monuments (Declaration of Monuments and Historical Buildings) (Consolidation) Notice (Cap. 53 sub. leg. B) and the Country Parks (Designation) (Consolidation) Order (Cap. 208 sub. leg. B). As explained by the Administration, the legal effect of these original notices and orders is not doubtful. However, the validity of a subsequent amendment to an unauthorized consolidated entry, or of the authentic Chinese text of such an entry, may be irregular and therefore questionable. At the request of the Bills Committee, the Administration has provided a list of Gazette notices of specifications made under section 43 of IGCO and consolidated into Cap. 1C in the absence of a consolidation power, as well as the lists of Gazette notices of declaration and Gazette orders of designations covered by the proposed amendments in Part 13⁴.

43. In response to members' enquiry on whether similar unauthorized consolidation is also found in other legislation but has not been included in the Bill for rectification/validation, the Administration has indicated that different means are proposed to deal with the unauthorized consolidated instruments identified –

- (a) the Registration of Persons (Invalidation of Identity Cards) (Consolidation) Order (Cap. 177 sub. leg. C) is proposed to be repealed under Part 15 of the Bill as it has had its effect already;
- (b) the Resolutions of the Legislative Council (Cap. 61 sub. leg. A) have been spent and editorially omitted from the Loose-leaf Edition. Therefore, no validation is proposed; and
- (c) the Resolutions of the Legislative Council (Cap. 116 sub. leg. B) will be kept in their current form because the consolidated resolutions are unlikely to be textually amended.

⁴ See Annex A and C of LC Paper No. CB(4)835/13-14(02).

44. Members note that the Administration will propose a CSA to the proposed Schedule to Cap. 1C with regard to the Companies Ordinance (Cap. 622), which has commenced operation on 3 March 2014.

Part 14 - Proposed amendments to various enactments to standardize the references to certain Customs and Excise Service public officers (clauses 69 to 146)

45. Members note that Part 14 of the Bill seeks to standardize the Chinese titles of "Commissioner of Customs and Excise", "Deputy Commissioner of Customs and Excise" and "Assistant Commissioner of Customs and Excise" in various enactments by removing the expression "香港" from their respective Chinese titles. The Administration will also propose CSAs to this Part so as to make similar amendments to certain enactments which were made after the publication of the Bill in the Gazette. On whether similar amendments are required for the titles of other public officers, the Administration has advised that it has not come to its attention that similar amendments are required to standardize the Chinese titles of other public officers.

46. The Bills Committee notes that the expression "香港" forms part of the Chinese title of the "Customs and Excise Service Children's Education Trust Fund" (i.e. "香港海關人員子女教育信託基金"). In this regard, the Administration has advised that the Trust Fund in question has been established under section 3(1) of the Customs and Excise Service Children's Education Trust Fund Ordinance (Cap. 551). As both the Chinese and English names provided in the said section have been duly registered, no amendment will be proposed to the names.

Part 15 - Miscellaneous amendments (clauses 147 to 173)

47. Question has been raised as to whether the arrangements as set out in the proposed rule 14A, Order 24 of Cap. 336H under clause 162 relating to the use of documents will also apply to the situation in which a document has been read to or by the judge in chambers.

48. As explained by the Administration, Order 1, rule 4(2) of 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. 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, it will not apply to the

situation where a document has been read to or by a judge/master in chamber (not open to the public) or in camera.

49. In examining the proposed amendment to the Road Traffic (Registration and Licensing of Vehicles) Regulations (Cap. 374 sub. leg. E) under clause 165 of the Bill, some members have questioned whether "信號" or "訊號" should be used as the Chinese rendition for "signal" in the Chinese text. The Bills Committee is aware that there is a mixed use of "信號" and "訊號" as the Chinese rendition of the term "signal" in different items of subsidiary legislation under the Road Traffic Ordinance (Cap. 374) ("RTO"). In response, the Administration has advised that "信號" is generally used as the Chinese equivalent to "signal" in the context of traffic-related legislation. It will look into the Chinese term for "signal" in the subsidiary legislation under RTO when there is a suitable opportunity.

Committee Stage amendments

50. The Bills Committee has considered the CSAs proposed to be moved by the Administration. It does not have any objection to these CSAs and will not move any CSAs in its name.

Resumption of Second Reading debate

51. The Bills Committee does not object to the resumption of the Second Reading debate on the Bill at the Council meeting of 26 November 2014.

Consultation with the House Committee

52. The Bills Committee reported its deliberations to the House Committee on 14 November 2014.

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2014

Membership list

Chairman Hon TAM Yiu-chung, GBS, JP

Members Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Ronny TONG Ka-wah, SC
Hon Cyd HO Sau-lan, JP
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Hon Dennis KWOK
Dr Hon Fernando CHEUNG Chiu-hung
Hon Martin LIAO Cheung-kong, SBS, JP

(Total : 13 Members)

Clerk Miss Polly YEUNG

Legal Adviser Mr Timothy TSO

Date 2 July 2014