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Report of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2017

Purpose

This paper reports on the deliberations of the Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2017 ("the Bills Committee").

The Bill

2. The last Statute Law (Miscellaneous Provisions) Ordinance was enacted in 2014. It has since become necessary for the Government to introduce another omnibus bill so as to make miscellaneous amendments to various Ordinances. The proposed amendments are largely minor, technical and non-controversial but are important for the purpose of updating or improving the relevant legislation. The Bill comprises 9 parts and the major proposed amendments are as follows:

- (a) amendments to the Criminal Procedure Ordinance (Cap. 221) and the Live Television Link and Video Recorded Evidence Rules (Cap. 221J) to confer on the court a discretion to permit a complainant of specified sexual offences to give evidence in proceedings by way of a live television link;
- (b) amendments to the District Court Ordinance (Cap. 336) so that the jurisdictional limit of costs-only proceedings may be amended by resolution of the Legislative Council ("LegCo");
- (c) amendments to the Legal Practitioners Ordinance (Cap. 159) and the Admission and Registration Rules (Cap. 159B) relating to the residency requirements for admission as a solicitor in Hong Kong;

and

- (d) amendments to the Legislation Publication Ordinance (Cap. 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) relating to laws compilation and operational arrangements for editorial amendments.

The Bills Committee

3. At the meeting of the House Committee held on 16 June 2017, Members agreed to form a bills committee to scrutinize the Bill. The membership list of the Bills Committee is at **Appendix**. Under the chairmanship of Hon Dennis KWOK Wing-hang, the Bills Committee held a meeting to discuss the Bill with the Administration and the Judiciary Administration ("JA").

Deliberations of the Bills Committee

4. Members of the Bills Committee agree in principle 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 – Amendments to the Criminal Procedure Ordinance (Cap. 221) and the Live Television Link and Video Recorded Evidence Rules (Cap. 221J)

5. At present, under section 79B of Cap. 221, the court¹ may, on its own motion or upon application, permit certain categories of persons to testify by way of a live television link. A member sought clarification on the categories of persons to be covered under the proposed new provisions in section 79B of Cap. 221.

6. The Administration advised that Division 1 of Part 2 of the Bill seeks to add new provisions to section 79B of Cap. 221 to confer on the court a discretion, on its own motion or upon application, to permit a complainant of specified sexual offences to give evidence in proceedings by way of a live television link. Besides, Division 2 of Part 2 of the Bill seeks to make consequential amendment to rule 3 of Cap. 221J, which relates to application for leave for a witness to whom section 79B of Cap. 221 applies to give evidence by means of a live television link, to cover a complainant of the relevant sexual offences. The Administration further advises that such permission is not automatic upon application but subject to the court's discretion.

¹ Under section 79A of Cap. 221, "court" includes the District Court and a magistrate.

7. The Bills Committee seeks the explanation of a "witness in fear" and the justifications for changing the Chinese rendition of "witness in fear".

8. The Administration has explained that a "witness in fear" is defined in section 79B(1) of Cap. 221 to mean a witness whom the court hearing the evidence is satisfied, on reasonable grounds, is apprehensive as to the safety of himself or any member of his family if he gives evidence. While it is possible that a complainant of sexual offences can be a "witness in fear", and hence be covered by the existing section 79B, it is not necessarily so. The Bills Committee notes that a complainant or witness of a sexual offence, though not "in fear" as defined in the current legislation, ought nonetheless to be treated with understanding, fairness and dignity. The court should have the requisite powers in appropriate cases to protect them from the embarrassment or ordeal of being exposed to public sight, any indignity of treatment, and the anxiety arising from the need to physically face the assailants during the trial.

9. In reply to a member's question, the Administration has advised that by adding a new provision to section 79B of Cap. 221, where a complainant within the meaning of section 156(8) of the Crimes Ordinance (Cap. 200) is to give evidence in proceedings in respect of a specified sexual offence within the meaning of section 117(1) of Cap. 200, the court may, on application or on its own motion, permit the complainant to testify by way of a live television link, subject to such conditions as the court may consider appropriate in the circumstances.

10. The Bills Committee further notes that specified sexual offence means any of the following, namely, rape, non-consensual buggery, indecent assault, an attempt to commit any of those offences, aiding, abetting, counselling or procuring the commission or attempted commission of any of those offences, and incitement to commit any of those offences.

11. In response to a member's enquiry about the reason for repealing "在恐懼中的" and substituting it with "惶恐" under Clause 3 of Part 2 of the Bill, the Administration has advised that the proposed amendment seeks to follow the plain language drafting practice adopted in recent years and that the new rendition in Chinese "惶恐証人" is considered to be a more formal translation of the English word "witness in fear" than the existing translation "在恐懼中的証人". The Bills Committee also notes that it is also meant to make "witness in fear" ("惶恐証人") a technical term.

12. The Chairman seeks clarification on whether "惶恐證人" in the Bill and "受驚人士/證人" in Practice Direction 9.5 have the same meaning. If so, he suggests using the same wordings to maintain consistency. The JA responds

that this should be the case and advises that the Judiciary would consider amending the term in the relevant Practice Direction(s) accordingly to tie in with the enactment of the Bill.

13. Referring to the proposed new section 79B(4A) of Cap. 221, the Chairman asks what are the "conditions" which would be considered by the court. The Administration advises that the term "conditions" in the proposed new section 79B(4A) is used in a broad sense and thus the court can consider imposing any conditions which it deems appropriate based on the circumstances of individual cases.

14. In response to a member's enquiry on whether other measures would be available for protection of witnesses or victims who might feel embarrassed to see the accused during court proceedings, the Administration has explained that other measures, such as the provision of protective screen will be available to prevent the public from seeing the witnesses or victims if deemed appropriate by the court.

15. A few members propose that the JA should enhance courtroom facilities as necessary to allow the presence of support persons who are more familiar with the witness where a child or a mentally incapacitated person is to give evidence via live television link. The Chairman also points out that relatives, social workers and teachers are often "disallowed" to act as "support persons" and asks for the reasons. The JA in response explains that arrangement in relation to "support persons" is governed by Cap. 221J and Practice Direction 9.5 issued by the Judiciary. Procedural fairness of the relevant court proceedings and whether the support person has the ability and relevant knowledge to provide emotional support for the witness during the trial are some of the important considerations in assessing the above said matter.

16. The Legal Adviser to the Bills Committee notes that the proposed section 79B(4A) of Cap. 221 renders "subject to any conditions the court considers appropriate in the circumstances" as "並可施加法庭認為在有關情況下屬恰當的條件，規限該項准許", whereas the same expression is rendered as "並可施加法庭認為在有關情況下屬恰當的條件規限" in the existing section 79B(4) and asks for an explanation of the discrepancy between these two renditions.

17. The Administration explains that the expressions "並可施加法庭認為在有關情況下屬恰當的條件規限" in the existing section 79B(4) and "並可施加法庭認為在有關情況下屬恰當的條件，規限該項准許" in the new section 79B(4A) are meant to achieve the same effect. In view of the plain language drafting policy adopted in recent years, it is a common and acceptable practice for a new provision to depart from an existing provision in terms of drafting style with a view to enhancing readability and comprehensibility (even in the

case where the existing and new provisions are located in the same section). This is why the expression used in the new section 79B(4A) is different from its counterpart in the existing section 79B(4).

Part 3 – Amendments to the High Court Ordinance (Cap. 4), the District Court Ordinance (Cap. 336) and the Competition Ordinance (Cap. 619) Relating to the Powers and Duties of Temporary Registrars of Various Ranks

18. The Administration explains that section 14A(3) of Cap. 336 provides that "[a] temporary deputy registrar shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and discharge all the duties of a deputy registrar and any reference in any law to a deputy registrar shall be construed accordingly." However, similar provisions are not found in sections 37AB, 37AC, 37A and 37B of Cap. 4, section 14AB of Cap. 336 and section 156C(1) to (3) of Cap. 619 which respectively provide for appointment of different ranks of temporary registrars in the High Court, the District Court and the Competition Tribunal.

19. The Bills Committee notes that the JA considers that despite the omission of such specific provisions in Cap. 4, Cap. 336 and Cap. 619, it is reasonable for the temporary registrars of different ranks appointed to the High Court, the District Court and the Competition Tribunal to be given the same jurisdiction, privileges, powers and duties of the registrar at the respective ranks because there will otherwise be no point in providing for such temporary positions in the law. For the sake of clarity, therefore, the JA proposes that a provision similar to that in section 14A(3) of Cap. 336 be added to sections 37AB, 37AC, 37A and 37B of Cap. 4, section 14AB of Cap. 336 and section 156C(1) to (3) of Cap. 619.

20. The Deputy Chairman enquires whether the Administration has reviewed all the relevant provisions in other Ordinances to see if a similar provision has to be added as appropriate. The JA points out that the proposed amendments in Part 3 of the Bill were drafted to the effect that whenever there is a reference in any law to the relevant registrar, the corresponding temporary registrar would have all the jurisdiction, privileges, powers and duties conferred or imposed on the registrar concerned. As such, a review on all the relevant provisions in the other Ordinances is considered not necessary. Members have not raised any issue.

Part 4 – Amendments to the District Court Ordinance (Cap. 336) Relating to the Composition of District Court Rules Committee

21. The Bills Committee notes that at present, the Department of Justice ("DoJ") is represented at all of the Rules Committees set up under various Ordinances for the making of court rules (including the Court of Final Appeal

Rules Committee, the High Court Rules Committee and the Criminal Procedure Rules Committee), except in the case of the District Court Rules Committee ("DCRC"). According to section 72(1) of Cap. 336, the DCRC may make rules of court regulating and prescribing the practice and procedure to be followed in the Court and the Registry of the Court, and matters incidental to the procedure or practice.

22. The JA explains that given DoJ's representation on all the other Rules Committees and given its extensive involvement in litigation in the District Court, there appears to be no reason why DoJ should not be represented at the DCRC. Having a representative from DoJ on the other existing Rules Committees has proved to be useful for their work. For consistency and to provide the DCRC with the same benefit, the JA proposes an amendment to section 17 of Cap. 336 to provide for representation of the Secretary for Justice ("SJ") at the DCRC.

23. In reply to the Deputy Chairman, the JA clarifies that upon the proposed addition of a representative to be appointed by the SJ, there would be a total of eight members in the DCRC and that the quorum for any meeting of the DCRC is proposed to be changed from three to four. The JA also clarifies that the Chairman of DCRC is the Chief Judge of the High Court. In response to a member's enquiry, the JA advises that currently the Registrar has been the secretary of the DCRC and that the proposed section 17(1B) of Cap. 336 serves to set out explicitly the current arrangement for broad alignment with the similar legislative provision for the High Court Rules Committee.

Part 5 – Amendments to the Legal Practitioners Ordinance (Cap. 159) and the Admission and Registration Rules (Cap. 159B)

24. The Bills Committee notes that to facilitate a better processing of application for admission as a solicitor in Hong Kong, The Law Society of Hong Kong ("Law Society") proposes an amendment to section 4(1A)(a) of Cap. 159 and Forms 1B, 1C, 2, 3 & 4 of Cap. 159B so that the reference point for the calculation of the period of residence for admission as a solicitor in Hong Kong under section 4(1A)(a) of Cap. 159 would be changed from the date of the applicant's admission as a solicitor to the date of the application for a certificate of eligibility for admission as a solicitor. It is further noted that the proposed amendments to the relevant forms of Cap. 159B are consequential amendments made as a result of the proposed amendment to section 4(1A)(a) of Cap. 159. Members have not raised any issue.

Part 6 – Amendments to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597)

25. The Administration explains that to maintain consistency with the English usage of the same term in the Mainland in making references to a specific level of courts in the judicial system there and to avoid confusion of the meaning of the relevant term, DoJ proposes the following amendments in the English text of Cap. 597: (a) the references to "Basic People's Court(s)" be amended to "Primary People's Court(s)"; and (b) the references to "recognized Basic People's Court(s)" be amended to "recognized Primary People's Court(s)". Members have not raised any issue.

Part 7 – Amendments to the Laws (Loose-leaf Publication) Ordinance 1990 (51 of 1990) and the Legislation Publication Ordinance (Cap. 614)

26. The Administration explains that to ensure that the statute book is accurate and up-to-date and conforms to the prevailing style and format, the editorial powers under section 2A(1) of Ord. No. 51 of 1990 have been exercised since 2012. The editorial powers in section 12 of Cap. 614 mirror these powers. After accumulating a few years of experience, certain areas of improvement or rationalization have been identified. The Bills Committee notes that amendments to the following provisions are proposed –

- (a) sections 2(2)(a) and 2A(1) of Ord. No. 51 of 1990 and sections 11(a) and 12 of Cap. 614 (to provide that the alteration of the title, short title or citation of an Ordinance is subject to editorial record requirements so that legislation users know clearly what alterations have been made); and
- (b) sections 14 to 16 of Cap. 614 (to follow closely the operational arrangements for editorial amendments in section 2B of Ord. No. 51 of 1990 which have been proved to work smoothly).

27. In addition, DoJ proposes that the definition of "consolidated copy" in Cap. 614 be amended to make it clear that the term covers an Ordinance that has not been amended, and to amend section 4(1)(a) of Cap. 614 to include five Ordinances that are not given a chapter number so that they are categorized under the "consolidated copy" part of the database established under section 3 of Cap. 614.

28. A member suggests to assign "special" Chapter number, say Chapter 1.1 or 1A, to those five Ordinances. The Administration responds that assignment of Chapter numbers to those five Ordinances might not be appropriate having regard to the nature of these Ordinances. In addition, Chapter numbers with letters are assigned to subsidiary legislation under the existing arrangement.

Part 8 – Amendment to the District Court Ordinance (Cap. 336) Relating to the Jurisdictional Limit of Costs-only Proceedings

29. The JA explains that Section 73A of Cap. 336 provides that the jurisdictional limits of the District Court set out in sections 32, 33, 35, 36, 37, 49, 52, 68B and 69B can be amended by resolution of LegCo. A new set of proceedings known as "costs-only proceedings" was introduced by the Civil Justice Reform in 2008 to allow parties to proceedings who have settled all issues in dispute, except the amount of costs, to seek an order of the court on costs only. In this regard, a new section 53A was added to Cap. 336 giving effect to such proceedings. Section 53A(5) of Cap. 336, in particular, provides that the District Court has jurisdiction to make an order relating to "costs-only proceedings" if the amount of the party's claim for those costs does not exceed \$1 million. However, the reference to section 53A(5) is currently not included in section 73A of Cap. 336. As such, any legislative amendment exercise relating to the jurisdictional limit of "costs-only proceedings" under section 53A of Cap. 336 cannot be made by resolution of LegCo, which is clearly not in line with the general scheme for revising jurisdictional limits under Cap. 336. To address this omission, the JA proposes the addition of a reference to section 53A in section 73A of Cap. 336. Members do not object.

Part 9 – Other miscellaneous amendments

30. The Bills Committee notes the Administration's proposal to make miscellaneous and technical amendments to various legislative provisions for different purposes, including to reinstate consequential amendments that have been omitted in previous amendment exercises, to formally repeal legislation that has ceased to have effect, to remove obsolete references to repealed provisions from certain provisions, to achieve consistency in certain expressions, to update a reference to the title of an item of subsidiary legislation, and to make provisions for correcting other minor errors. Members have not raised any issue.

Commencement

31. Noting that with the exception for Part 6 and Division 52 of Part 9, the Bill, if passed, would come into operation on the day on which it is published in the Gazette as an Ordinance, the Legal Adviser to the Bills Committee enquires about the rationale for:

- (a) commencing Part 6 (amendments to Cap. 597) on a day to be appointed by SJ by notice published in the Gazette; and

- (b) commencing Division 52 of Part 9 (technical amendments to the Airport Authority Bylaw (Cap. 483A) relating to modification of the Road Traffic Ordinance (Cap. 374)) on 15 December 2017.

32. The Administration replies in writing that the current list of recognized Basic People's Courts for the purpose of Cap. 597 was published by the Secretary for Justice in the Gazette on 25 July 2014 pursuant to section 25(1) of Cap. 597 (G.N. 4289). If the amendments to Cap. 597 proposed under the Bill are adopted, a new list of recognized "Primary" People's Courts would be published. Clause 1(3) proposes that Part 6 will commence on a day to be appointed by the Secretary for Justice so that the new list would be published on the same day when Part 6 commences.

33. Also, the Administration explains that Section 8 of the Road Traffic (Traffic Control) (Amendment) Regulation 2017 (L.N. 63 of 2017) amends regulation 52 of the Road Traffic (Traffic Control) Regulation (Cap. 374G) to empower the Commissioner for Transport to cause or permit another person to install and operate on or near a road any equipment that the Commissioner considers necessary for collecting information on vehicle and pedestrian movements, and controlling and guiding vehicles. Section 50(1) of Cap. 483A provides that Cap. 374 and its subsidiary legislation shall apply to all designated roads as defined in section 2 of Cap. 483A, and when applied to the designated roads, provisions of Cap. 374 and its subsidiary legislation shall be subject to the provisions of Cap. 483A made under section 36(3) of the Airport Authority Ordinance (Cap. 483) and the exclusions and modifications set out in Schedule 2 to Cap. 483A. As sections 12 and 13 of Part V of Schedule 2 to Cap. 483A modify regulation 52 of Cap. 374G, Division 52 of Part 9 makes consequential and related amendments to these sections. Hence, Division 52 of Part 9 will commence on 15 December 2017, to align with the commencement date of L.N. 63 of 2017.

Committee Stage amendments

34. The Bills Committee will not propose any Committee Stage amendments in its name to the Bill.

Resumption of Second Reading debate

35. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at a future Council meeting.

Advice sought

36. Members are invited to note the deliberations of the Bills Committee.

Council Business Division 4
Legislative Council Secretariat
25 October 2017

Bills Committee on Statute Law (Miscellaneous Provisions) Bill 2017

Membership list

Chairman Hon Dennis KWOK Wing-hang

Deputy Chairman Hon Kenneth LEUNG

Members Hon Paul TSE Wai-chun, JP
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, BBS, JP
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon YUNG Hoi-yan
Hon CHEUNG Kwok-kwan, JP

(Total : 13 Members)

Clerk Ms Sophie LAU

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