



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

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立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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30 May 2024

Miss Jenny HUI
Senior Government Counsel
Department of Justice
5/F, East Wing, Justice Place
18 Lower Albert Road
Central, Hong Kong

Dear Miss HUI,

Statute Law (Miscellaneous Provisions) Bill 2024

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, we should be grateful if you could clarify the matters set out in the Appendix.

Please let us have your response in both Chinese and English as soon as practicable, preferably before the first meeting of the Bills Committee.

Yours sincerely,

(Mark LAM)

Senior Assistant Legal Adviser (Acting)

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Clauses 1(2), 1(3) and 1(4) – commencement

1. According to clause 1(2) of the Bill, the Bill (if passed) would come into operation on the expiry of 30 days beginning on the day on which the enacted Ordinance is published in the Gazette, except that under clause 1(3) of the Bill, Part 6 of the Bill would come into operation on the later of (a) the date on which the enacted Ordinance is published in the Gazette, or (b) 2 August 2024, and under clause 1(4) of the Bill, Part 10 of the Bill would come into operation on the date on which the enacted Ordinance is published in the Gazette. Please clarify the reason(s) for proposing such commencement arrangements.

Part 4 – proposed amendments to the Post Office Regulations (Cap. 98A)

2. It is proposed under Part 4 of the Bill to repeal various provisions in the Post Office Ordinance (Cap. 98) and Cap. 98A in relation to obsolete services of the Hongkong Post including, among others, postal orders and postal notes. Please clarify whether amendment(s) would need to be made to regulation 17 of Cap. 98A (which relates to the registration fee to be charged in relation to unregistered postal packets found to contain certain items) which contains references to postal orders and postal notes.

Part 5 – proposed amendments to the Immigration Ordinance (Cap. 115)

3. Please clarify the reason(s) for the lapse of time between the Court of Final Appeal's ruling in *Prem Singh v Director of Immigration* [2003] 1 HKLRD 550 in 2003, and the proposal to repeal paragraph 3(1)(c) of Schedule 1 to Cap. 115 under clause 16 of the Bill.

Clause 18(3) – proposed English rendition of “任何條例”

4. It is proposed under clause 18(3) of the Bill to amend section 113C(1)(c) of the Criminal Procedure Ordinance (Cap. 221) as “a fixed penalty within the meaning of an Ordinance” (“任何條例所指的定額罰款”). Please clarify the reason why “an Ordinance” is proposed to be the English rendition of “任何條例” instead of “any Ordinance” as in section 120 of Cap. 221.

Clause 24 – notification requirement(s)

5. It is proposed under clause 24 of the Bill to add a new section 30 to the Hong Kong Auxiliary Police Force Ordinance (Cap. 233) to provide transitional provisions in relation to the existing section 14 of Cap. 233 (relating to disciplinary offences and penalties) which is proposed to be amended under clause 20 of the Bill. Under the proposed new section 30(1) of Cap. 233, the existing section 14 of Cap. 233 continues to apply if the concerned Hong Kong Auxiliary Police Force (“HKAPF”) member is notified of the

conduct of proceedings for the disciplinary offence under Cap. 233 before the amended section 14 of Cap. 233 comes into operation. Please clarify what are the requirement(s) to notify the concerned HKAPF member of such proceedings (for example, whether the concerned HKAPF member must be served with a notice in writing containing specific information including the charge laid against the member), and whether such requirement(s) would need to be expressly set out in Cap. 233, as in section 5(3) of the Police (Discipline) Regulations (Cap. 232A).

Clause 41 – proposed amendments to the Private Healthcare Facilities Ordinance (Cap. 633)

Proposed definition of “substitute decision maker”

6. It is proposed under clause 41 of the Bill to replace the existing definition of “substitute decision maker” (“SDM”) of a patient under Cap. 633, in relation to the making of a complaint against a private healthcare facility to the Committee on Complaints against Private Healthcare Facilities, with a definition under a new section 8A of Cap. 633. The existing definition of SDM under Cap. 633 has the meaning ascribed to the term (with a specific modification) in section 3 of the Electronic Health Record Sharing System Ordinance (Cap. 625). Please clarify why section 3(2)(a) of Cap. 625 as currently applied to Cap. 633 (which provides for a parent of a patient who is aged below 16 to hold one of the highest priority to act as SDM of the patient), is not retained in the proposed new section 8A of Cap. 633.

Meaning of “family member”

7. Please clarify whether the legislative intent on the meaning of “family member” as referenced in the proposed new sections 8A(2)(c) and 8A(4)(f) of Cap. 633 would cover individuals who are related to the patient by blood, marriage (including the spouse of a patient who is aged 16 or above in a heterosexual marriage, foreign same-sex marriage, and/or the patient’s partner in a civil partnership), adoption or affinity. Please also clarify whether a definition for “family member” would need to be provided for in Cap. 633, as in section 2(1) of Cap. 625, to clearly set out the legislative intent.

Potential conflict of interests regarding complaint made by operator of private healthcare facility

8. Under the proposed new sections 8A(2)(d) and 8A(4)(g) of Cap. 633, for a patient who is aged below 16, and a patient who is aged above 16 and mentally incapacitated as defined by section 2(1) of the Mental Health Ordinance (Cap. 136), or incapable of managing his or her own affairs, the prescribed medical service provider that provides, or is about to provide, a medical service to the patient, as a last resort, may act as the patient’s SDM. In this regard, it is noted that “prescribed medical service provider” is proposed under the new section 8A(5) of Cap. 633 to mean, among others, the operator of a permitted facility, and under section 2(1) of Cap. 633, “permitted facility” means, among others, a

private healthcare facility for which a licence is in force. In other words, an operator of a private healthcare facility may act as SDM of a patient to make a complaint against the same private healthcare facility run by such operator pursuant to section 82(1)(c) of Cap. 633. Please clarify if this is the legislative intent. If so, please clarify how the making and handling of such complaint, including the settlement and withdrawal of the complaint under section 82(3) of Cap. 633 by such operator, would be free from conflict of interests, for example, by way of providing for SDM of a patient to have regard to the best interests of the patient in the making and handling of a complaint, as in sections 6(5) and 9(5) of Cap. 625.

Clause 83 – proposed amendment to the long title of the Radiation Ordinance (Cap. 303)

9. Please clarify the reason(s) for repealing the phrase “import, export” from the long title of Cap. 303. In this regard, it is noted that section 7 of Cap. 303 concerns, among others, the selling or otherwise dealing in or with radioactive substance or irradiating apparatus.

Schedule – the Chinese rendition of “Government”

10. It is proposed under item 6, Part 52 of the Schedule to the Bill to replace the phrase “與 官方 持有的毗鄰土地” with “及與之毗鄰並屬 政府 持有的土地” in the Chinese text of paragraph 20 of the Second Schedule to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372). On the other hand, it is noted that item 1, Part 13 of the Schedule to the Bill proposes to replace “官方” with “特區政府” in the Chinese text of section 7 of the Misrepresentation Ordinance (Cap. 284). Please clarify whether “政府” or “特區政府” should be used in the proposed revised paragraph 20 of the Second Schedule to Cap. 372.

11. It is noted that Parts 14, 18, 19, 38 and 54 of the Schedule to the Bill propose to make various amendments to replace “Crown” (“官方”) with “Government” (“特區政府”) in the Air Pollution Control Ordinance (Cap. 311), the Waste Disposal Ordinance (Cap. 354), the Water Pollution Control Ordinance (Cap. 358), the Water Pollution Control (Sewerage) Regulation (Cap. 358AL) and the Noise Control Ordinance (Cap. 400) respectively. Please clarify whether amendments would need to be made to replace “政府” with “特區政府” as the Chinese rendition of “Government” in other provisions of these Ordinances (see for example, section 37A of Cap. 311, section 15B(1) of Cap. 354, the definition of “public wastewater treatment facility” in section 2(1) of Cap. 358, section 9 of Cap. 358AL and the definition of “public place” in section 2 of Cap. 400), as well as in the other Ordinances in the Bill that contain the same expression (see for example, section 100(6) of the Merchant Shipping (Instructions to Surveyors) (Passenger Ships) Regulations (Cap. 369C), the definition of “operator” in section 2 of the Road Traffic Ordinance (Cap. 374) and section 9 of the Trade Marks Ordinance (Cap. 559)) for consistency.

Progress on adaptation of laws

12. It is noted from paragraph 6 of the fourth report made by the Law Reform Commission Secretariat to the Legislative Council Panel on Administration of Justice and Legal Services in March 2024 concerning the progress on the systematic review of statutory laws of Hong Kong (LC Paper No. CB(4)334/2024(03)) that there are still outstanding pieces of legislation which warrant examination on adaptation. Please advise Members on the Administration's plan and timetable to complete the review exercise.