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By E-mail (mkylam@legco.gov.hk)

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Mr Mark LAM
Senior Assistant Legal Adviser (Acting)
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Mr LAM,

Statute Law (Miscellaneous Provisions) Bill 2024

Thank you for your letter dated 30 May 2024 (“**Letter**”).

2. In consultation with the following relevant bureaux and departments, the Government’s response is set out at **Annex**:-

- (a) On paragraph 2 of Appendix to your Letter: Commerce and Economic Development Bureau;
- (b) On paragraph 3 of Appendix to your Letter: Security Bureau and Immigration Department;
- (c) On paragraph 5 of Appendix to your Letter: Security Bureau and Hong Kong Police Force;

- (d) On paragraphs 6 to 8 of Appendix to your Letter: Health Bureau;
- (e) On paragraph 9 of Appendix to your Letter: Health Bureau;
- (f) On paragraphs 10 to 11 of Appendix to your Letter: Law Reform Commission Secretariat, Transport and Logistics Bureau, Environment and Ecology Bureau, and Commerce and Economic Development Bureau; and
- (g) On paragraph 12 of Appendix to your Letter: Law Reform Commission Secretariat.

Yours sincerely,



(Jenny HUI)

Senior Government Counsel
Constitutional and Policy Affairs Division

Encl.

c.c. : Legal Adviser
Clerk to Bills Committee

#608298-v3

Statute Law (Miscellaneous Provisions) Bill 2024 (“Bill”)

**The Government’s Response to Senior Assistant Legal
Adviser (Acting)’s letter dated 30 May 2024 (“Letter”)**

On paragraph 1 of Appendix to the Letter: Clause 1(2), 1(3) and 1(4)—commencement

1. The majority of the amendments made by the Bill are to come into operation on the expiry of 30 days beginning on the gazettal date. In the light of the large number of amendments, the arrangement is to allow a reasonable period for editing, updating and publishing the amended legislation, ensuring that the public can access the updated copies of them on Hong Kong e-Legislation in a timely manner.
2. Part 10 (amendments to the Legislation Publication Ordinance (Cap. 614)) of the Bill comes into operation on the day of gazettal. This arrangement is to tie in with the work schedule of the verification of legislation in Hong Kong. There is an imminent need for us have the new power to make “formatting amendment” to adjust the formats of certain “database instruments”, so that we can also publish their verified copies for public use by Q1/2025.
3. Part 6 (proposed amendments to the Criminal Procedure Ordinance (Cap. 221)) comes into operation on the day of gazettal or on 2 August 2024, whichever is the later. The reason for this arrangement is that the Wild Animals Protection (Amendment) Ordinance 2024 also amends section 113C(1)(c) of the Criminal Procedure Ordinance (Cap. 221) and the amendment will take effect on 1 August 2024. To avoid clash of amendments, the aforesaid commencement arrangement is necessary.

On paragraph 2 of Appendix to the Letter: Part 4—proposed amendments to the Post Office Regulations (Cap. 98A)

4. The purpose of regulation 17 of the Post Office Regulations (Cap. 98A) is to impose a compulsory requirement on senders to use registered mail to send valuable items including banknotes, postage stamps, bearer cheques and uncrossed postal orders or postal notes. In fact, the regulations of the Universal Postal Union also prohibit the sending of valuable items through ordinary mail. Subject to the legislation of the place of origins and destinations, such items may only be sent by insured or registered mail.
5. Regulation 17 does not specify the issuing parties of the valuable items,

including postal orders or postal notes. Thus, even though Hongkong Post will not issue postal orders or postal notes, there is still a possibility that senders may post postal orders or postal notes issued by other postal administrations by ordinary mails. Therefore, no amendment to the references to postal orders or postal notes in regulation 17 is required.

On paragraph 3 of Appendix to the Letter: Part 5—proposed amendments to the Immigration Ordinance (Cap. 115)

6. Paragraph 3(1)(c) of Schedule 1 to the Immigration Ordinance (Cap. 115), as read in combination with paragraph 1(5)(b) of that Schedule, was held to be in contravention of Article 24(2)(4) of the Basic Law by the Court of Final Appeal in *Prem Singh v Director of Immigration* [2003] 1 HKLRD 550 (“**CFA Judgment**”). Part 5 of the Bill proposes to repeal paragraph 3(1)(c) in view of that ruling. As a result of and in line with the Court’s ruling, since 16 June 2003, non-Chinese nationals applying for permanent resident status are no longer required to obtain unconditional stay status beforehand. The Legislative Council Panel on Security was briefed in the same year. The Government had planned to introduce a legislative amendment to a similar effect but the plan was temporarily withheld owing to the subsequent litigation relating to the right of abode. In recent years, the Government proactively reviewed provisions in the Immigration Ordinance (Cap. 115) requiring adaptation of laws, and decided to proceed with the original planned legislative amendment arising from the CFA Judgment.

On paragraph 4 of Appendix to the Letter: Clause 18(3)—proposed English rendition of “任何條例”

7. According to paragraph 10.3.1 of “Drafting Legislation in Hong Kong – A Guide to Styles and Practices”, our current drafting convention is to not use “any” if the indefinite article “a” or “an” can be used instead. Since both “any Ordinance” and “an Ordinance” are viable options for the English text of the proposed section 113C(1)(c), the latter is used. In contrast, it is not viable to use “某條例” in the Chinese text because it would sound as if we were referring to one particular Ordinance. Therefore, “任何條例” is used.

On paragraph 5 of Appendix to the Letter: Clause 24—notification requirement(s)

8. Currently, disciplinary procedure of the Auxiliary Police Force is regulated by the relevant guideline. According to the “Guide to Conducting Boards of Discipline”, a trained Senior Inspector of Police (Auxiliary Police) or a Chief Inspector of Police (Auxiliary Police) will be appointed as the prosecutor for the relevant proceedings. The prosecutor will prepare written notice to the defaulter with particulars, amongst others, of “Charges and particulars of offences”. Therefore, the Hong Kong Auxiliary Police Force Ordinance (Cap.

233) need not expressly set out the relevant notification requirements.

On paragraphs 6 to 8 of Appendix to the Letter: Clause 41—proposed amendments to the Private Healthcare Facilities Ordinance (Cap. 633)

On proposed definition of “substitute decision maker”

9. Section 82(1) of the Private Healthcare Facilities Ordinance (Cap. 633) specifies what persons may make a complaint to the Committee on Complaints against Private Healthcare Facilities (“**the Complaints Committee**”) against a private healthcare facility (“**PHF**”) for which a licence is in force. These include, among others, the patient (section 82(1)(a)), a next of kin of the patient (section 82(1)(b)) and a substitute decision maker (“**SDM**”) of the patient (section 82(1)(c)). A parent of a patient who is aged below 16 has already been covered by section 82(1)(b) of Cap. 633.

10. On the other hand, section 3(2)(a) of the Electronic Health Record Sharing System Ordinance (Cap. 625) provides that a parent of a healthcare recipient who is aged below 16 has to accompany the healthcare recipient “at the relevant time” in order to be a SDM of the healthcare recipient. The term “relevant time” is defined under section 3(5) of Cap. 625 to mean, in relation to a particular context, the time at which an application for registration to the Electronic Health Record Sharing System (“**eHRSS**”) is made, a joining consent for eHRSS is required or a sharing consent for eHRSS is given, etc. Such a requirement is specific to the context of eHRSS, and is thus not applicable in relation to a complaint to the Complaints Committee under Cap. 633. If the interpretation of SDM in Cap. 633 models after Cap. 625 in respect of this requirement, it would create an unnecessary barrier for a SDM to make complaints against a PHF.

11. In light of the foregoing, we consider the content of section 3(2)(a) of Cap. 625 should not be retained in the proposed new section 8A of Cap. 633.

On meaning of “family member”

12. The policy intent of the existing section 82 of Cap. 633 is to ensure that the persons eligible for making a facility complaint should be limited to the patients themselves and those who may reasonably act on their behalf. It should not be construed in a restrictive manner which may compromise the legitimate rights of the patients to lodge complaints under Cap. 633. In this connection, under the proposed new sections 8A(2)(c) and 8A(4)(f), a person residing with the patient in the same household, no matter whether he or she is related to the patient by blood, is also considered as SDM. This serves to better uphold patients’ interest.

13. By the same token, we consider a broader and ordinary meaning of

“family member”, which means an individual who is related to the patient by blood, marriage, adoption or affinity, should apply under the prevailing policy, and thus it is not necessary to include a definition under Cap. 633.

On “potential conflict of interest regarding complaint made by operator of private healthcare facility”

14. As stipulated in section 82(1)(c) of Cap. 633 and section 3(2)(e) of Cap. 625, the current framework allows a healthcare provider, whether or not he or she is the operator of the same PHF, to lodge a complaint against a PHF. The proposed new sections 8A(2)(d) and 8A(4)(g) are added to retain the same right for operators of PHFs to serve as the last resort of SDM for patients who are aged below 16, or who are aged 16 or above and of any descriptions under the proposed new section 8A(3).

15. Under the two-tier complaints management system in handling complaints against licensed PHF under Cap. 633, the PHF should establish a mechanism to handle the complaints received against it at the first tier level. The PHF should review the case, reply to the complainant and implement enhancement measures where necessary. If the complainant is not satisfied with the handling and reply of the PHF concerned, the complainant may then make a further complaint to the Complaints Committee. It is extremely unlikely that the operator of the PHF concerned would act as the patient’s SDM to make a complaint against the same PHF.

16. Even if the operator of the PHF concerned acts as the SDM of the patient, the existing sections 88 to 91 and 93 of Cap. 633 also provide for the investigation powers of the Complaints Committee, and may penalise any person making false or misleading statements or representations to the Complaints Committee.

On paragraph 9 of Appendix to the Letter: Clause 83—proposed amendment to the long title of the Radiation Ordinance (Cap. 303)

17. Licensing controls on import and export of radioactive substances and irradiating apparatus were originally stipulated in section 7(1) of the Radiation Ordinance (Cap. 303) when the Ordinance was first enacted in 1957. These aforesaid controls were then repealed by the Radiation (Amendment) Bill 1965, and as such the long title of the Ordinance should have been amended at the same time by repealing the phrase “import, export”. The proposed amendment is merely meant to align the long title of the Radiation Ordinance (Cap. 303) with the aforesaid legislative amendment in 1965.

On paragraphs 10 to 11 of Appendix to the Letter: Schedule—the Chinese rendition of “Government”

18. The proposed amendment set out in item 6, Part 52 of the Schedule to this Bill is made to adapt the phrase “land held by the Crown” and “官方持有的土地” as used in the English and Chinese texts respectively of paragraph 20 of the Second Schedule to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372). The same expression as previously found in section 21(2) of Cap. 372 was a term as defined under section 2(1) of the same ordinance for the purpose of that ordinance. Those two references (i.e. in sections 2(1) and 21(2)) of “land held by the Crown” were already adapted by the Adaptation of Laws (Crown Land) Ordinance (Ord. No. 29 of 1998) to “land held by the Government” (“政府持有的土地”). Therefore, the proposed adaptation of the reference in paragraph 20 of the Second Schedule to Cap. 372 is to bring it in line with the same expression as adapted elsewhere in this ordinance and in, for example, the Waterworks Ordinance (Cap. 102) where similar expressions when used in land-related context were also consistently adapted in this manner under Ord. No. 29 of 1998.

19. Whether the Chinese rendition of the term “Government” should be “政府”, “特區政府” or in some other suitable form(s) of expression has to be examined on a case-by-case basis in relation to each individual legislative provision where that term appears, which would warrant the conduct of a comprehensive exercise combing through all the relevant provisions in the Laws of Hong Kong. In prioritising the deployment of available resources within the Government, this Bill has sought to bring in as many proposed adaptation amendments as practicable to deal with the removal of terms having colonial connotations first, bearing in mind that reliance may in the meantime be placed on invoking section 21E of Schedule 8 to the Interpretation and General Clauses Ordinance (Cap. 1) by way of which any reference to “政府” shall be construed as a reference to “特區政府” where applicable for laws previously in force.

On paragraph 12 of Appendix to the Letter: Progress on adaptation of laws

20. Since the resumption of the exercise of sovereignty by the People’s Republic of China, responsible policy bureaux have been identifying provisions or references as requiring adaptation with relevant legislative amendments introduced from time to time by the Government. In 2022, the Law Reform Commission (“LRC”) Secretariat spearheaded the exercise to conduct a systematic review of statutory laws of Hong Kong, the adaptation of laws component of which has been given priority. Adopting the approach of “dealing with simple issues before the difficult ones”, the responsible policy bureaux have been introducing legislative amendments to the relevant

provisions through different bills in order, including for example taking forward those adaptation amendments which can be regarded as minor, technical and non-controversial in nature through this Bill.

21. The responsible policy bureaux have been proactively following up with the ordinances or subsidiary legislation which contain outstanding provisions that require adaptation with a view to commencing the legislative amendment process as soon as possible. Meanwhile, as progress continues to be made, it is expected that there may be more outstanding provisions, ordinances or subsidiary legislation which warrant examination on adaptation. The responsible policy bureaux will apprise the Legislative Council and the public of their legislative plans after they have devised appropriate amendment proposals and gone through the necessary procedure. The LRC Secretariat would continue to regularly report on progress to the Panel on Administration of Justice and Legal Services.

June 2024