

立法會
Legislative Council

LC Paper No. LS32/2024

**Paper for the House Committee Meeting
on 24 May 2024**

**Legal Service Division Report on
Statute Law (Miscellaneous Provisions) Bill 2024**

I. SUMMARY

1. The Bill

This Bill seeks to make miscellaneous amendments to various Ordinances:

- (a) for amendments without adaptation of laws elements, including:
 - (i) amendments to the Evidence Ordinance (Cap. 8) to provide for the admission of a print made from a microfilm the production of which involves digital means as evidence in criminal and/or civil proceedings;
 - (ii) amendment to the District Court Ordinance (Cap. 336) to provide for the provisions on service in relation to an appeal made by the Secretary for Justice (“SJ”) against a verdict or order of acquittal by way of case stated; and
 - (iii) amendments to the Legislation Publication Ordinance (Cap. 614) to empower SJ to make formatting amendments to certain database instruments; and
- (b) for amendments with adaptation of laws elements, amendments mainly to bring 73 Ordinances (including subsidiary legislation) into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People’s Republic of China.

2. Public Consultation

The Administration has briefed or consulted certain relevant stakeholders on certain proposals under the Bill.

**3. Consultation with
LegCo Panel**

An information paper on the major legislative proposals to be included in the Bill was circulated to members of the Panel on Administration of Justice and Legal Services on 23 February 2024. No member raised any issues.

4. Conclusion

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to amend numerous Ordinances (including subsidiary legislation), Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 22 May 2024. Members may refer to the Legislative Council (“LegCo”) Brief (File Ref.: CPA 3/00/16C) issued by the Department of Justice in May 2024 for further details.

Object of the Bill

2. The Bill seeks to make miscellaneous amendments to various Ordinances.

Provisions of the Bill

3. The Bill is an omnibus bill which consists of 15 Parts and a Schedule. Its proposed amendments may broadly be categorized into two groups, namely, amendments without adaptation of laws elements and amendments with adaptation of laws elements. The major proposed amendments are summarized in the ensuing paragraphs.

Amendments without adaptation of laws elements (Parts 2 to 13 and 15 of the Bill)

Amendments to the Evidence Ordinance (Cap. 8)

4. Sections 39 and 40 of Cap. 8 respectively provide for the admission of prints made from films of specified documents as evidence in criminal and/or civil proceedings. “Film” is currently defined under section 41 of Cap. 8 to include, among others, a microfilm. Part 2 of the Bill seeks to amend section 41 of Cap. 8 to the effect that “film” would also include a microfilm the production of which involves digital means.

Amendments to the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78)

5. Section 11(1)(h) of Cap. 78 contains a reference to the Contracts of Employment (Indigenous Workers) Convention 1939 of the International Labour Organization, which was abrogated in 2018. Part 3 of the Bill seeks to repeal that section accordingly.

Amendments to the Immigration Ordinance (Cap. 115)

6. Part 5 of the Bill seeks to repeal paragraph 3(1)(c) of Schedule 1 to Cap. 115, in view of the ruling of the Court of Final Appeal (“CFA”) in *Prem Singh v Director of Immigration* [2003] 1 HKLRD 550 that such paragraph, in combination with paragraph 1(5)(b) of that Schedule, contravened Article 24(2)(4) (i.e. requirements for a

person not of Chinese nationality to become a permanent resident of Hong Kong) of the Basic Law (“BL”).¹

Amendments to the Criminal Procedure Ordinance (Cap. 221)

7. Section 113C of Cap. 221 provides for the deemed level of fine in relation to a fine (other than an “excluded fine” as defined in section 113C(1)) for an offence expressed as an amount of money, or expressed as an amount of money that may be prescribed under subsidiary legislation (e.g. HK\$1 to HK\$2,000 is deemed to be a fine at level 1). Part 6 of the Bill seeks to amend section 113C(1) of Cap. 221 to the effect that an “excluded fine” would also cover (a) a fine or penalty that is calculated by reference to a unit of time, a unit of measurement, or a specified number of persons or objects, and (b) a fixed penalty within the meaning of any Ordinance (i.e. instead of only those that are currently listed in section 113C(1)(c)).

Amendments to the Hong Kong Auxiliary Police Force Ordinance (Cap. 233)

8. Section 14(m) of Cap. 233 contains one of the disciplinary offences for certain members of the Hong Kong Auxiliary Police Force (“Force”), namely, conduct calculated to bring the Force into disrepute. Part 7 of the Bill seeks to amend section 14(m) of Cap. 233 to substitute “calculated” with “likely” so as to align it with the similar disciplinary offence for certain police officers under regulation 3(2)(m) of the Police (Discipline) Regulations (Cap. 232A).² Part 7 of the Bill also proposes to make other technical and drafting amendments to Cap. 233.

Amendment to the District Court Ordinance (Cap. 336)

9. Currently, there is no express provision on service contained in section 84(a) of Cap. 336 in relation to an appeal made by the Secretary for Justice (“SJ”) from the District Court to the Court of Appeal (“CA”) against a verdict or order of acquittal by way of case stated. In *律政司司長 對 張浩輝及另四人* [2023] HKCA 877, CA remarked that it was

¹ BL 24(2)(4) provides that a person not of Chinese nationality is a Hong Kong permanent resident if the person has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and has taken Hong Kong as the person’s place of permanent residence. In connection with establishing such permanent residence, paragraph 3(1)(c) of Schedule 1 to Cap. 115 requires a person not of Chinese nationality to be “settled” in Hong Kong when the person makes a declaration to the Director of Immigration that the person has taken Hong Kong as the person’s place of permanent residence. Paragraph 1(5)(b) of that Schedule provides that a person is “settled” in Hong Kong if the person is not subject to any limit of stay in Hong Kong. CFA held that such unconditional stay requirement was incompatible with BL 24(2)(4) and was therefore unconstitutional. According to paragraph 14 of the LegCo Brief, since 16 June 2003, a non-Chinese person applying for Hong Kong permanent resident status has no longer been required to obtain unconditional stay status beforehand and the Panel on Security was briefed in 2003.

² The Court of Appeal ruled in *Chiu Hoi Po v Commissioner of Police* [2008] 4 HKLRD 67 that, in the context of Cap. 232A, the English word “calculated” in the offence under the then regulation 3(2)(m) of Cap. 232A could not have intended to require a subjective intention on the part of the defaulter to bring the public service into disrepute. As stated in paragraph 18 of the LegCo Brief, as a result of the judgment, the word “calculated” in the said offence was replaced with the word “likely” to make this clear (i.e. the offence may be established without a subjective intention on the part of the defaulter to bring the public service into disrepute).

necessary for the Administration to consider whether or not such relevant provisions should be made. Part 8 of the Bill seeks to amend section 84(a) of Cap. 336 to the effect that section 115 of the Magistrates Ordinance (Cap. 227) (i.e. provisions on service and notice) would apply, with necessary modifications, in relation to such an appeal.

Amendments to the Legislation Publication Ordinance (Cap. 614)

10. Part 10 of the Bill seeks to amend Cap. 614 to empower SJ to make formatting amendments to database instruments (other than Ordinances) (i.e. BL, a national law applying in Hong Kong, or other materials and information that SJ considers useful to users of the e-Legislation website) and to amend square-bracketed cross-references in Schedules to Ordinances. It also proposes to make other consequential and textual amendments to Cap. 614.

Amendments to the Private Healthcare Facilities Ordinance (Cap. 633)

11. Under section 82(1)(c) of Cap. 633, a “substitute decision maker” of a patient of a private healthcare facility (e.g. a private hospital) may make a complaint to the Committee on Complaints against Private Healthcare Facilities against the facility. Pursuant to section 2(5) of Cap. 633, “substitute decision maker” has the meaning as ascribed to the term (with a specified modification) in section 3 of the Electronic Health Record Sharing System Ordinance (Cap. 625). Whilst section 3 of Cap. 625 defines “substitute decision maker”, by, among others, reference to “the relevant time” in some scenarios (e.g. for a guardian of a person below 16 years of age (“minor”) to be the minor’s “substitute decision maker”, the guardian has to accompany the minor at “the relevant time”), section 2(5) of Cap. 633 does not currently provide for the meaning of “the relevant time” in relation to a complaint under Cap. 633.

12. Part 11 of the Bill seeks to amend Cap. 633 to provide for the meaning of “substitute decision maker” in relation to a complaint under Cap. 633 (e.g. a guardian of a minor would be the minor’s “substitute decision maker” without the requirement of accompanying the minor at “the relevant time”) (proposed new section 8A of Cap. 633).

Amendments to the Patents Ordinance (Cap. 514), the Patents (Designation of Patent Offices) Notice (Cap. 514A) and the Patents (General) Rules (Cap. 514C)

13. Part 12 of the Bill seeks to amend the references to the English title of “國家知識產權局” from “State Intellectual Property Office” to “China National Intellectual Property Administration” in Cap. 514, Cap. 514A and Cap. 514C to reflect the change of that English title on 28 August 2018.

Amendments to the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597), the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639), and the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (Cap. 639A)

14. Part 13 of the Bill seeks to amend the English equivalent of “高級人民法院” from “Higher People’s Court” to “High People’s Court” in Cap. 597, Cap. 639 and Cap. 639A, in order to be consistent with the English translation adopted by the Supreme People’s Court.³

Amendments with adaptation of laws elements (Part 14 of, and Schedule to, the Bill)

15. Part 14 of, and Schedule to, the Bill seek to amend 73 Ordinances (including subsidiary legislation) mainly to bring them into conformity with BL and with the status of Hong Kong as a Special Administrative Region of the People’s Republic of China (“PRC”), including:

- (a) with respect to section 8 of the Probate and Administration Ordinance (Cap. 10) which relates to the powers of the High Court in relation to a will, Part 2 of the Schedule to the Bill seeks to replace the court’s power to do such other things concerning the will as the “High Court in England may do with regard to such matters” with as “justice of the case requires”;
- (b) clause 64 of the Bill seeks to repeal section 72(2) of Cap. 10 which provides for the application of the practice and procedure in the Probate Registry in England to the High Court in Hong Kong and its Probate Registry under the specified condition;
- (c) clauses 76 and 77 of the Bill seek to repeal the new Part IIA (new sections 23D and 23E) of, and new Schedule to, the Wills Ordinance (Cap. 30) to be added by sections 8 and 10 of the Wills (Amendment) Ordinance 1995 (Ord. No. 56 of 1995) (which have not yet come into operation) relating to the incorporation of the Annex to the Convention providing a Uniform Law on the Form of an International Will which had been signed by the United Kingdom (but had yet to ratify or bring the provisions of the Convention into force) but has not been acceded to by PRC; in addition, Part 3 of the Schedule to the Bill seeks to consequentially amend section 5(1) of Cap. 30 in view of the proposed repeal of the new section 23D of Cap. 30; and
- (d) Parts 64 and 65 of the Schedule to the Bill seek to replace “Her Majesty the Queen, Her Heirs or Successors” with “the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws” in section 9 of the Masonic Benevolence Fund Incorporation Ordinance (Cap. 1034) and section 10 of the Zetland Hall Trustees Incorporation Ordinance (Cap. 1055).

³ See the Notice by the Supreme People’s Court of Issuing the English Translations of Organs, Job Titles, and Workplaces of People’s Courts (No. 184 [2021] of the Supreme People’s Court) issued in July 2021.

Commencement

16. Except for Parts 6 and 10 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. Part 6 of the Bill (relating to amendments to Cap. 221 as stated in paragraph 7 above) 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. Part 10 of the Bill (relating to amendments to Cap. 614 as stated in paragraph 10 above) would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public Consultation

17. According to paragraph 60 of the LegCo Brief, the Labour Advisory Board Committee on the Implementation of International Labour Standards was briefed in March 2021 on the proposed amendments to Cap. 78 (see paragraph 5 above), and no comment was received from the members. With respect to the proposed amendments to Cap. 336 (see paragraph 9 above), the Judiciary, The Law Society of Hong Kong and the Hong Kong Bar Association were consulted on 6 September 2023 and are being kept informed of the legislative exercise. The two legal professional bodies expressed support for those proposed amendments. The Judiciary, upon consultation, has expressed no in-principle objection to the proposed amendments to Cap. 10, Ord. No. 56 of 1995 and Cap. 30 (see paragraph 15(a) to (c) above). Regarding the proposed amendments to Cap. 1034 and Cap. 1055 (see paragraph 15(d) above), the Masonry and the Zetland Hall have been consulted and they expressed no in-principle objection.

Consultation with LegCo Panel

18. As advised by the Clerk to the Panel on Administration of Justice and Legal Services, an information paper on the major legislative proposals to be included in the Bill (LC Paper No. CB(4)243/2024(1)) was circulated to members on 23 February 2024. No member raised any issues relating to the legislative proposals.

Conclusion

19. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to amend numerous Ordinances (including 73 Ordinances/subsidiary legislation relating to adaptation of laws), Members may wish to consider whether a Bills Committee should be formed to study the Bill in detail.

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