

LC: Speech by the Secretary for Justice in resuming second reading debate of Statute Law (Miscellaneous Provisions) Bill 2008

Following is the speech by the Secretary for Justice, Mr Wong Yan Lung, SC, in resuming the second reading debate of the Statute Law (Miscellaneous Provisions) Bill 2008 in the Legislative Council today (July 2):

Madam President,

As I explained when I introduced the Statute Law (Miscellaneous Provisions) Bill (the “Bill”) into the Council on 20 February 2008, this Bill makes technical and minor amendments that are required to achieve the following four purposes –

- (a) enhance the clarity of certain statutory provisions that criminalize failure to perform any act to the satisfaction of an enforcement authority;
- (b) define the vendor’s obligation regarding the delivery of title deeds on completion of a sale of land;
- (c) change the post titles of certain prosecutors to highlight their independence; and
- (d) remove obsolete references to two sets of repealed rules.

I am most grateful to Hon Margaret Ng, the Chairman of the Bills Committee and other members of the Bills Committee for their hard work and helpful contributions, and for producing a very detailed report on the Bill. It has been succinctly summarized by the Chairman just now. We have proposed some changes to the Bill which have been agreed by the Bills Committee. As a result, I will be moving a number of Committee Stage Amendments (CSAs) later. I shall now give a brief outline of these amendments.

Clause 2 - Commencement

The proposal to delete Parts 2 to 4 of the Bill means that clause 2, which is the commencement provision of the Bill, is no longer required. The effect of the repeal is that the Ordinance will come into operation on the day on which it is published in the Gazette.

Parts 2 to 4 – Various Ordinances containing offence provisions with the drafting formula “to the satisfaction of” an enforcement authority

Parts 2 to 4 (clauses 3 to 55) make amendments to various Ordinances and subsidiary legislation in which offences with the phrase “to the satisfaction of” an enforcement authority are created.

The object of the proposed provisions is to make express, for purposes of certainty, the duties impliedly imposed under the existing legislation on both the relevant authority and the person regulated.

In the Bills Committee meetings, Members were concerned that the drafting of the provisions does not address the question whether a person who has commenced the regulated activity without approaching the relevant authority to ascertain the measures to be taken “to the satisfaction of” that authority will be subject to prosecution, even if the authority has not specified the measures to be taken to its satisfaction. The Bills Committee requested us to seek the views of the relevant authorities and advise Members of the means by which the person regulated would be informed of the specific measures to be taken “to the satisfaction of” those authorities after the relevant provisions are amended as proposed.

We advised the Bills Committee that with such a large number of provisions and relevant authorities involved, some time would be required for all returns to be received. There are also matters of some complexity upon which we would wish to seek clarification from the relevant authorities regarding their responses in the context of individual provisions. In the circumstances, it would be impossible, in the time remaining before the resumption of the Second Reading, to reach a properly concluded view, and to draft appropriate CSAs, should they be required, in respect of the many provisions which are subject to the proposed amendment. Therefore we decided, with the agreement of the Bills Committee, to withdraw Parts 2 to 4 of the Bill, and CSAs are now introduced to that effect. We will reintroduce in a future Bill the amendments relating to the drafting formula “to the satisfaction of” an enforcement agency.

Clause 64 – Conveyancing and Property Ordinance (Cap. 219)

Clause 64 adds a new section 13A to the Conveyancing and Property Ordinance which will address the concern brought about by a number of court cases. These cases suggest that there is a duty on a vendor of land to produce the “originals” of “all” title deeds and documents relating “exclusively” to the subject property, including those made before the required intermediate root of title.

Accordingly, the new section 13A provides that unless the contrary intention is expressed, a vendor of land shall, for the purpose of giving title to that land, deliver to the purchaser only (i) the Government lease if it relates exclusively to that land and (ii) any document that relates exclusively to that land and is required to be produced by the vendor as proof of title to that land.

At the suggestion of the Bills Committee and the Law Society, a CSA is proposed to amend clause 64. Instead of providing that a vendor shall deliver the relevant documents to the purchaser, the CSA refers to a purchaser’s entitlement to require the vendor to deliver such documents. This is consistent with the language used in section 13 of the Conveyancing and Property Ordinance (Cap. 219) concerning proof of title.

The Bills Committee also suggested, and we agreed, that for purposes of certainty, the word "original" should be added to the proposed new section 13A(1). Accordingly, the CSA now introduced specifies that a purchaser of land is entitled to require the vendor to deliver to him the original of the relevant documents referred to in the proposed new section 13A(1).

While noting that the risk of affecting a third party's right or interest is very remote, Members consider that the right or interest of any person other than the vendor and the purchaser should not be affected as a result of the operation of the proposed new section 13A. It is proposed to amend the new section 13A(4) to address Members' concern by making it clear that the new section 13A shall not affect the right or interest in the land concerned of any other person who is not a party to the contract for the sale and purchase of that land.

Clause 66 – Pneumoconiosis (Compensation) Appeal Rules

The Pneumoconiosis (Compensation) (Amendment) Bill 2008 was passed by the Legislative Council on 9 April 2008 and commenced on 18 April 2008. The title of the Pneumoconiosis (Compensation) Appeal Rules (Cap. 360 sub. leg. C) was amended to “Pneumoconiosis and Mesothelioma (Compensation) Appeal Rules” on that date. Clause 66 contains a reference to the “Pneumoconiosis (Compensation) Appeal Rules” and a CSA is required to refer to the new title of those Rules.

Conclusion

Madam President, with these remarks and subject to the CSAs proposed by the Administration, I commend the Bill to Honourable Members.

Ends/Wednesday, July 2, 2008