



Law Drafting Division



Law Draftsman, Mr Paul Wan (centre), with Deputy Law Draftsman (Legislation), Ms Fanny Ip (left); and Deputy Law Draftsman (Bilingual Drafting & Administration), Mr Gilbert Mo (right)

Law Drafting Division

Work of the Division

The Law Drafting Division is responsible for drafting all legislation proposed by the Government. Its objective is to draft legislation that accurately reflects the intended policy and is both legally sound and easy to understand. This chapter sets out the progress the Division has made in providing legislative drafting services in the HKSAR and highlights the Division's most significant work in the busy and dynamic years of 2012 to 2014.

The HKSAR is the only jurisdiction in the world that enacts legislation in both the English and Chinese languages. Both language texts of legislation are equally authentic, and the law operates on the principle that one text is not treated as merely a translation of the other. To achieve this, the Division is dedicated to refining its drafting skills and developing best practices to ensure that the two texts have no ambiguities and clearly convey the same meaning.

As well as drafting legislation for new government policies, the Division carries out other important duties. First, the Division vets the bills and subsidiary legislation put forward by non-government bodies to ensure that they comply with current drafting styles and practices. Secondly, it provides the drafting work necessary for applying the relevant national laws of the People's Republic of China to the HKSAR (i.e. those listed in Annex III to the Basic Law).

Finally, the Division plays a key role in compiling and publishing the Laws of Hong Kong by ensuring that the published laws are up to date and accessible. As at 31 December 2014, the hard copy loose-leaf edition of the laws comprised 56 volumes (excluding the Editorial Records and Index volumes), containing 696 Ordinances and 1466 items of subsidiary legislation. In addition, the online legislation database, known as the Bilingual Laws Information System (BLIS), is available free to the public on the internet.

New legislation

From 2012 to 2014, the Division delivered a substantial legislative programme on a range of important public issues, comprising a total of 69 Ordinances and 561 pieces of subsidiary legislation which were enacted and published in the Gazette. The new Ordinances enacted during the period are set out below:

- **Adaptation of Laws (Military References) Ordinance** (Ordinance No. 2 of 2012)

The Ordinance adapts military-related references in legislation to conform with the Basic Law and the HKSAR's status as a Special Administrative Region of the People's Republic of China.

- **Lifts and Escalators Ordinance** (Ordinance No. 8 of 2012)

The Ordinance provides for the safety of lifts and escalators by establishing a registration scheme for contractors, engineers and workers engaged in lift or escalator works.

- **Competition Ordinance** (Ordinance No. 14 of 2012)

The Ordinance prohibits any conduct that prevents, restricts or distorts competition in the HKSAR, and prohibits mergers that substantially lessen competition in the HKSAR.

- **Mediation Ordinance** (Ordinance No. 15 of 2012)

The Ordinance provides for a regulatory framework for various aspects of mediation.

- **Residential Properties (First-hand Sales) Ordinance** (Ordinance No. 19 of 2012)

The Ordinance regulates the provision of sales brochures and price lists, and the use of show flats for the sale of first-hand residential properties. It also regulates the viewing of units before sale, the publication of sale arrangements and the execution of agreements concerning first-hand residential properties.



- **Companies Ordinance** (Ordinance No. 28 of 2012)

The Ordinance reforms and modernises the HKSAR's company law. It restates part of the existing enactments and makes new provisions relating to companies.

- **Contracts (Rights of Third Parties) Ordinance** (Ordinance No. 17 of 2014)

The Ordinance enables a person who is not a party to a contract to enforce a term of the contract under certain circumstances. It brings about a variation in the common law rule of privity of contract insofar as third party rights under a contract are concerned.

Role of the Division

The Division plays a significant role in making all the statutory laws of the HKSAR, from Ordinances to subsidiary legislation. When the Government proposes new legislation, drafting counsel of the Division will liaise with those making the proposal to gain a thorough understanding of its background and intended effect. Drafting counsel, who are specialists professionally trained in the principles and techniques of drafting legislation, must first carefully analyse the drafting instructions to ensure that the proposal is

conceptually sound and legally effective. They will then conceive a legislative scheme to give effect to the proposal and choose the most appropriate forms and words. This process exemplifies the dual aspects of legislative drafting: the conceptual aspect, in which drafting counsel ascertain and perfect the concepts to be employed in the draft; and the literary aspect, in which drafting counsel select the best means of expressing those concepts.

After drafting the proposed legislation, drafting counsel provide legal support to the relevant policy bureaux during the legislative process. When government bills and subsidiary legislation are submitted to the Executive Council for consideration, drafting counsel attend the Executive Council meetings to advise on general legal issues and questions relating to drafting.

Usually, after a bill has been introduced into the Legislative Council, a Bills Committee will be formed to consider it. For example, 44 Bills Committee meetings were held to scrutinise the Companies Bill. Drafting counsel attended those meetings to advise on drafting and other general legal issues and then drafted all the committee stage amendments proposed or agreed to by the Government. These amendments were considered and decided on before the bill was put to the vote for its final reading in the Legislative Council meeting. Likewise, if an item of subsidiary legislation made by the Government is referred to a sub-committee after being tabled at the Legislative Council, drafting counsel will attend the sub-committee meetings and draft any amendments which the Government proposes.

In the complex process of drafting legislation, drafting counsel are assisted by a dedicated team that includes law translation officers, law clerks, an English legislative editor, personal secretaries, proofreaders, typists and calligraphists. Their hard work contributes to the making of statutory laws in the HKSAR.

Highlights of the Division's work in 2012, 2013 and 2014

Bilingual guide to styles and practices of drafting legislation in the HKSAR

As part of the Division's ongoing drive to improve the readability and accessibility of the laws of the HKSAR, it has made publicly available a comprehensive guide to the styles and practices used in drafting legislation in the HKSAR. The guide, known as *Drafting Legislation in Hong Kong: A Guide to Styles and Practices*, was published in January 2012 and consists of 15 chapters canvassing most of the important aspects of drafting legislation in the HKSAR. The Guide makes transparent the form and presentation of legislation and explains the drafting approaches and techniques adopted by the Division. It also shares advice on useful tools to adopt, as well as pitfalls to avoid, in the drafting process.

Furthermore, the Guide discusses the major parameters in the HKSAR context within which laws are drafted, including the Basic Law, specific Ordinances and common law principles. The publication of this work represents the culmination of years of meticulous internal examination of the Division's drafting practices to improve the quality and comprehensibility of the English and Chinese texts.

A Chinese version of the Guide was published in June 2012. In addition to carrying the same content as the English-

language Guide, it includes passages and examples dealing with drafting legislation in Chinese and a chapter on issues specific to the Chinese text. In the same month, the Division published a bilingual version of *How Legislation Is Made in Hong Kong*, which provides



updated information and statistics relating to making legislation in the HKSAR. Intended as a companion text to the Guide, it gives readers an overview of the legislation-making process in the HKSAR and elaborates on the roles played by stakeholders involved in that process. With these publications, the Division hopes to enable all statute users to better understand the law.

The database: a mammoth project in progress

In recent years, the Division embarked on a major e-legislation initiative to transform access to statutory laws by undertaking a project to establish a verified, authenticated and searchable electronic database of all legislation in the HKSAR. The enactment of the Legislation Publication Ordinance (Cap 614) in 2011 paved the way for the implementation of the database project by providing the necessary legislative backing for it. Although the existing Bilingual Laws Information System already provides a consolidated version of the laws of the HKSAR through the internet, it has no legal status and is for reference purposes only. Once completed, the database project will facilitate free and convenient online access to accurate and up-to-date legislation in the HKSAR with legal status by the public anywhere, anytime.

The major benefits of the database are:

- timely dissemination of and free access to legislation in the HKSAR with legal status;
- improved accuracy and efficiency in compiling legislation in the HKSAR; and
- enhanced searching and printing functions.

The Division plans to implement the database in two phases. Phase 1 will cover the core functions for use by the Department internally (i.e. the new laws compilation and publication system). Phase 2 will cover the functions for public use and, on its

completion, the public will be able to access the database. Legislative materials will then be migrated gradually from the current loose-leaf edition of the laws to the database.

In late 2012, the contract for the project was awarded and, for the most part of 2013, the project was at the system analysis and design stage. In August 2013, a Hong Kong Legislation Database User Liaison Group was formed. The group, which held its first meeting in September 2013, provides a channel through which the Division could benefit from suggestions by frequent users of legislation. By the end of 2014, the Division had carried out a series of tests for the functions covered in phase 1.

The verification process (i.e. the process of checking and confirming the relevant data as being an accurate version of legislation) is targeted to start in 2015/2016 at the earliest. That promises to be a formidable task which will take several years to complete. The existing loose-leaf edition of legislation will be phased out progressively as the verification process makes its way to completion.

Customised drafting course taught locally

In the summer of 2013, the Division launched an intensive legislative drafting course for new recruits and less experienced counsel, which was the first in-house drafting course entirely designed and conducted by counsel of the Division. The course aimed to equip junior drafters with the necessary knowledge to deal with their drafting assignments and to give them a solid foundation for developing and sharpening their drafting skills.

Held from 9 July to 6 August 2013, the course comprised 10 sessions and was attended by six participants. The Hong Kong-centric and practical nature of the course ensured that what the participants had learnt from the course could

be directly applied in drafting legislation in the local context. Course topics included not only the fundamentals of legislative drafting such as the structure and interpretation of legislation, but also specialised subjects such as the handling of drafting instructions and approaches to bilingual drafting.

A noteworthy component of the course was a drafting class held in Macao and attended by the counsel of the Division and participants from the Legal Affairs Bureau and the Law Reform and International Law Bureau of the Macao SAR. The drafting class provided a welcome opportunity for legislative drafters from two different bilingual jurisdictions to exchange views and knowledge whilst collaborating on a drafting assignment. The kind assistance of officials of the two authorities in Macao contributed greatly to the success of the project.



Members of a joint drafting class consisting of Macao and Hong Kong legislative drafters held in 2013

A second legislative drafting course was organised for junior drafters of the Division in the summer of 2014. This five-day course, which was conducted by Canadian law drafting expert Mr Paul Salembier, focused on the more fundamental techniques and principles of legislative drafting. To encourage the exchange and sharing of experience, lawyers from other Divisions of this Department and the Legislative Council Secretariat were also invited to attend the course. Another significant feature of the course was that ample opportunities were provided

to the participants to engage in open discussions of their drafting assignments with guidance from the course tutor.



Tutor of the legislative drafting course held in 2014, Mr Paul Salembier (front row, third right), and the participants

Division's links with other jurisdictions

Maintaining connections with drafting offices in other jurisdictions is important to the Division in different ways. First, despite their diverse cultural backgrounds and legal systems, drafting offices have the common goal of drafting effective legislation. Thus it is always valuable to see how other drafting offices seek to attain that goal. Secondly, the ease of communications in our technologically connected world has enabled drafting offices to benefit greatly through collaborative endeavours. Assistance can be provided in various aspects of drafting work including computer-assisted drafting and gaining access to research or reference materials. Thirdly, a competent legislative drafter who needs to deal with a variety of subject matters and understand them in some depth can gain important insights by broadening his or her horizons as far as possible.

From 2012 to 2014, the Division continued to strengthen its links with drafters in other jurisdictions. In 2012 and 2014, colleagues of the Division attended the Conferences of Clarity (an international plain language organisation) held in

Washington, DC, and Antwerp respectively. Those conferences brought together a diverse network of lawyers and communication experts who shared their knowledge of and experience in plain language techniques and projects.

In November 2012, a delegation led by the Law Draftsman, Mr Paul Wan, visited the Legal Affairs Bureau and the Law Reform and International Law Bureau of the Macao SAR. The delegation from the HKSAR had a very useful exchange of ideas and experiences on bilingual drafting with their counterparts in Macao.

The Conference of the Commonwealth Association of Legislative Counsel held in Cape Town, South Africa, in April 2013 offered a unique setting for drafting counsel at every level of experience to exchange views and to network with legislative drafters from many jurisdictions. Three members of the Division including the Law Draftsman attended the Conference and subsequently shared their observations and reflections with other colleagues of the Division at an all-counsel meeting.



Cape Town by the Atlantic Ocean, where the CALC (Commonwealth Association of Legislative Counsel) Conference 2013 was held

As information technology is now an integral part of the work of any drafting office, participation in legislative drafting IT forums is a highly beneficial

experience for the staff of the Division. Counsel of the Division participated in the PCC IT Forums held by the Australasian Parliamentary Counsel's Committee in 2012, 2013 and 2014.

In addition to overseas visits and participation in international conferences, the Division sent a senior drafter on a 10-week secondment to the Office of the Queensland Parliamentary Counsel in Brisbane, Australia, in the summer of 2014. The secondment was considered extremely valuable in that it gave the drafter an immersive experience of the professional and management practices of an overseas drafting office, and set a solid foundation for further exchanges and co-operation with law drafters of that office.

Looking forward

More user-friendly legislation

One of the long-term objectives of the Division is to make legislation more accessible as well as easier to read and understand. Indeed the Division holds the view that the rule of law, which is treasured so much by the people of the HKSAR, requires that the law be accessible.

With this in mind, the Division has adopted drafting principles and techniques that ensure the statutory laws of the HKSAR are as clear and simple as possible. Its drafting techniques include those that aim at facilitating comprehension of legislation to all statute users, from legal professionals to members of the public, in the understanding that legislation regulates the conduct of citizens in many aspects of their lives.

Looking forward, the Division will remain strongly committed to plain language drafting as a means to creating user-friendly laws. The Division's Drafting

Techniques and Legislative Styles Committee, established in 2008, will continue to meet regularly to examine legislative drafting styles and practices, with an emphasis on techniques that can produce simple and clear legislation. Apart from the changes already implemented (e.g. updated document designs, avoiding archaic words, using plainer terms and simplifying sentence structures), the Division has begun using overviews, signposting, notes and examples in legislation as aids to the reader.

As part of this commitment, the Division has made an initiative to consider how legislative drafting in Chinese can be further advanced—the Chinese Drafting Sub-committee, formed under the Drafting Techniques and Legislative Style Committee, held its first meeting in December 2012. The Sub-committee has been assigned with the tasks of compiling a comprehensive manual for legislative drafting in Chinese; recommending drafting styles for the Chinese text; and disseminating good practices for drafting the law in Chinese. In addition, it will make recommendations on matters relating to co-ordinating the drafting of the two official language texts of HKSAR legislation.

Professional development of drafting counsel

The Division strives to enhance the continuing professional development of drafting counsel to meet the challenges posed by the ever-evolving law and the technological advances of the digital age. Consequently, it gives a very high priority to providing drafting counsel with training and other opportunities to upgrade and update their knowledge, skills and competencies.

In-house workshops and seminars

To this end, a structured programme of in-house talks and workshops on a wide range of topics is being implemented. The programme is conducted



Young drafting counsel attending the in-house Practical Drafting Course 2013

by experienced drafting counsel, as well as outside experts, and covers the theory and practice of law drafting and other relevant legal and non-legal topics. The Division realises that it is a challenging task to make both the Chinese and English texts of legislation equally readable. The programme has therefore been designed to give a balanced emphasis on the theory and practice of drafting in both official languages. For example, on 2 October 2013, former Chief Legislative Counsel of Canada, Mr Lionel Levert, shared his extensive experience in bilingual drafting with counsel in an engaging seminar organised by the Division. In 2014, out of the 10 workshops conducted for members of the Division, five of them covered topics related to bilingual drafting or the use of Chinese in legislative drafting.



The Law Draftsman, Mr Paul Wan (left), presents a souvenir to former Chief Legislative Counsel of Canada, Mr Lionel Levert, at a seminar on bilingual drafting

Knowledge sharing

The Division has been implementing measures to ensure that its professional staff has ample opportunities to share knowledge and experience in a friendly and supportive environment. These include monthly all-counsel meetings during which drafters discuss their current work items, and an e-forum on which counsel post questions and share information in an informal way.

The Division has also developed an elaborate system of public folders in its internal computer network to facilitate knowledge sharing. The system provides a convenient means of central access for members of the Division to training materials and other related information that may be helpful to them.