

LC: SJ's speech on the motion on "Report of the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation"

Following is the opening speech (English translation) by the Secretary for Justice, Mr Wong Yan Lung, SC, on the motion on the "Report of the Subcommittee to Study Issues Relating to the Power of the Legislative Council to Amend Subsidiary Legislation" in the Legislative Council today (March 1):

Mr President,

I would like to extend my thanks to the work of the Subcommittee and to Dr Hon Margaret Ng, Chairman of the Subcommittee, for raising the present motion debate.

As at January 31, 2012, there were 1 426 pieces of subsidiary legislation made under 693 principal Ordinances in Hong Kong. These figures testify the importance of subsidiary legislation as an integral part of Hong Kong's legislative practice and our body of law. They also speak to the need to have a proper understanding about the use of subsidiary legislation. In the past year, the Subcommittee had conducted work on the power of the Legislative Council to amend subsidiary legislation and related matters. The discussions have enriched LegCo's and the Administration's understanding on this subject and enhanced communications in areas where there may be different views.

The practice of the Legislature delegating the power to make subsidiary legislation to another body is a long standing one. It stems from pragmatic considerations, serving the need to promote efficiency, so as to enable the Legislature to prioritise its resources by focusing on issues of policy importance, leaving detailed and technical matters and matters which require flexibility and frequent or urgent changes to be set out in subsidiary legislation.

The delegation of power to make subsidiary legislation does not mean LegCo loses control over the subsidiary legislation. The exercise of delegated power to make subsidiary legislation remains subject to effective checks. I must emphasise that the Administration when making subsidiary legislation has to act within the scope of its delegated authority, as laid down in the principal Ordinance. The exercise of delegated legislative power is amenable to judicial review. Moreover, the subsidiary legislation may be subject to vetting by LegCo in accordance with the Interpretation and General Clauses Ordinance (Cap 1) and the provisions of the empowering Ordinance.

Inevitably, there may be occasions where the Administration and LegCo have different views about the interpretation of an empowering provision in an Ordinance. The Administration will enhance communications with LegCo and its legal advisers in such cases so that the differences in legal views can be deliberated and discussed in a timely, open and transparent manner. At the same time, the Administration remains committed to working closely with LegCo and its legal advisers in order to reach consensus on issues before LegCo.

Mr President, I will end here. I will respond after hearing the views of Members. Thank you.

Ends/Thursday, March 1, 2012