

LC: Speech by SJ in moving the Second Reading of Statute Law
(Miscellaneous Provisions) Bill 2012

Following is the speech (English translation) by the Secretary for Justice, Mr Wong Yan Lung, SC, in moving the Second Reading of the Statute Law (Miscellaneous Provisions) Bill 2012 in the Legislative Council meeting today (May 2):

Acting Madam President,

I move that the Statute Law (Miscellaneous Provisions) Bill 2012 be read the Second time.

It is the practice of the Department of Justice to introduce, at regular intervals, to the Legislative Council a Statute Law (Miscellaneous Provisions) Bill, proposing amendments to various Ordinances that are largely technical and non-controversial but are important for the purpose of updating or improving existing legislation. Since the enactment of an Ordinance of this kind in 2008, the Administration has considered it necessary to introduce a new Statute Law (Miscellaneous Provisions) Bill to propose amendments of this kind in a consolidated manner. Parts 2 to 12 of the Bill contain the relevant proposed amendments and the following is a brief description of such proposed amendments.

Part 2 of the Bill seeks to amend the Legal Practitioners Ordinance (Cap 159). The relevant proposed amendments are contained in 5 divisions respectively.

(a) Division 1 of Part 2 proposes to amend section 31C of that Ordinance to clarify that employed barristers are not required to be insured.

(b) Division 2 of Part 2 seeks to repeal the finality provision in section 40M of the Legal Practitioners Ordinance to allow an appeal to be lodged with the Court of Final Appeal against any order made by a Notaries Public Disciplinary Tribunal. This provision is similar to the finality provision in another provision of the Ordinance, which was repealed in 2005 as a result of a judgment of the Court of Final Appeal. The Bill now seeks to repeal the relevant finality provision in section 40M. A related amendment to section 40R of the Ordinance is also proposed.

(c) Division 3 of Part 2 contains proposed amendments to sections 25, 39 and 40P of the Legal Practitioners Ordinance which are consequential to the earlier amendments made to sections 13(1) and 37B(1) of that Ordinance.

(d) Division 4 of Part 2 seeks to amend section 50B of the Legal Practitioners Ordinance to clarify that a foreign lawyer or firm must not take a solicitor or barrister into partnership if the solicitor or barrister holds a practising certificate.

(e) Division 5 of Part 2 contains proposed amendments to section 72 of the Legal Practitioners Ordinance which are consequential to the repeal of section 27A of the same Ordinance under the Legal Practitioners (Amendment) Ordinance 2000.

Part 3 of the Bill seeks to amend section 3 of the Administration of Estates by Consular Officers Ordinance (Cap 191). This provision stipulates that the Chief Executive (CE) may by order notified in the Gazette under the hand of the Chief Secretary for Administration (CS) vary the Schedule to the Ordinance. In other words, two steps are required for variation of the Schedule: (a) the first step is for the CE to make an order; and (b) the second step is for the CS to sign a notice of the order. It is proposed that the second step be dispensed with so that an order made by the Chief Executive in Council under section 3 could be directly published in the Gazette so as to streamline the gazettal requirement of orders made under that section.

Part 4 of the Bill seeks to implement the recommendation of the report of the Law Reform Commission of Hong Kong published in December 2010 that the irrebuttable common law presumption that a boy under the age of 14 is incapable of sexual intercourse should be abolished. It is proposed that a new section 1180 be added to the Crimes Ordinance (Cap 200) to implement this recommendation. The Administration has consulted the Legislative Council's Panel on Administration of Justice and Legal Services on this proposal and the Panel expressed support to it.

Part 5 of the Bill proposes to repeal section 12(6) of the Customs and Excise Service Ordinance (Cap 342). At present, section 12(6) stipulates that an officer under interdiction may not leave Hong Kong without the permission of the Commissioner of Customs and Excise. This provision is proposed to be repealed because it may not be compatible with the freedom to travel as enshrined in the Basic Law and in the Hong Kong Bill of Rights.

Part 6 of the Bill seeks to amend the Toys and Children's Products Safety Ordinance (Cap 424) to simplify the formulation adopted in the definitions of "children's product standard" and "toy standard" and the format of Schedules 1 and 2 to that Ordinance which set out the applicable safety

standards specified for toys and children's products. The proposals will facilitate further updating of the standards.

Part 7 of the Bill proposes to amend the Legislation Publication Ordinance (Cap 614) and the Laws (Loose-leaf Publication) Ordinance 1990 (Loose-leaf Ordinance) to facilitate the editorial work involved in preparing and updating the Laws of Hong Kong. The proposed amendments include making the ambit of editorial powers for the loose-leaf edition to be in line with the new legislation database regime under section 12 of the Legislation Publication Ordinance, adding the power to insert after a reference to the title of an Ordinance the chapter number given under the Loose-leaf Ordinance or under the Legislation Publication Ordinance, and adding the power to insert after the definition of a word/expression its Chinese or English equivalent.

Part 8 of the Bill contains various proposed amendments which are aimed to facilitate the introduction of solicitor corporations as a form of legal practice. In this regard, the Law Society has proposed that all the relevant provisions relating to solicitor corporations in the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (1997 Ordinance) be brought into operation at the same time when the Solicitor Corporation Rules prepared by the Law Society comes into operation. Since the 1997 Ordinance was enacted quite some time ago, some of the amendments in the 1997 Ordinance have been overtaken by subsequent amendments to the Legal Practitioners Ordinance made after 1997. As a result, the Bill proposes that further amendments be made to these two Ordinances so as to enable the relevant provisions of the 1997 Ordinance and the Solicitor Corporation Rules to be brought into operation at the same time. Besides, we also propose to re-enact the new section 7L of the Legal Practitioners Ordinance as enacted by the 1997 Ordinance to clarify the extent to which the Companies Ordinance is to apply to a solicitor corporation.

As a result of the establishment of the legal office of Assistant Principal Solicitor (APS) in the Intellectual Property Department, Part 9 adds references to APS to the relevant provisions of various Ordinances. The proposed amendments are to ensure that APSs are eligible to be appointed as certain judicial officers.

Parts 10 to 12 of the Bill contain certain minor and technical amendments to various Ordinances and subsidiary legislation which are proposed to be made for miscellaneous purposes, for example, to correct or update references appearing in certain enactments; to achieve internal

consistency in terminology and consistency between the Chinese and English texts of certain enactments; and to repeal various items of subsidiary legislation that have ceased to be in force.

Acting Madam President, as I mentioned at the beginning of this speech, the Bill is part of our continuing effort to collate and make technical and non-controversial statutory amendments which are important for the purpose of updating and improving the Laws of Hong Kong.

With these remarks, I would like to appeal to Members to support this Bill.

Ends/Wednesday, May 2, 2012