

LC: Translation of Secretary for Justice's speech to move the Second Reading of Statute Law (Miscellaneous Provisions) Bill 2014

\*\*\*\*\*

Following is the speech (English translation) by the Secretary for Justice, Mr Rimsky Yuen, SC, to move the Second Reading of the Statute Law (Miscellaneous Provisions) Bill 2014 at the Legislative Council meeting today (April 30):

President,

I move that the Statute Law (Miscellaneous Provisions) Bill 2014 be read the second time.

It has been the practice of the Department of Justice (DoJ) to introduce, at regular intervals, to the Legislative Council a Statute Law (Miscellaneous Provisions) Bill, proposing amendments to various Ordinances that are technical and non-controversial for the purpose of updating or improving existing legislation.

This practice has worked well in the past, and the Administration now adopts the same practice to introduce a new Statute Law (Miscellaneous Provisions) Bill (the Bill) to deal with miscellaneous amendments proposed by bureaux and the DoJ in a consolidated manner. Parts 2 to 15 of the Bill contain the relevant proposed amendments, the key elements of which are outlined below.

Part 2 of the Bill seeks to amend certain provisions in the Crimes Ordinance relating to sexual offences, so as to reflect the rulings of the Court of First Instance and the Court of Appeal in the case of Leung T C William Roy, and the Court of Final Appeal's ruling in the case of Yau Yuk Lung. The major amendments include lowering the age of consent for homosexual buggery and gross indecency between men from 21 to 16, and repealing the offence of homosexual buggery committed otherwise than in private between men. The Security

Bureau has consulted the Equal Opportunities Commission (EOC), the Advisory Group on Eliminating Discrimination against Sexual Minorities and the Review of Sexual Offences Sub-committee of the Law Reform Commission on the above proposed amendments.

Part 3 of the Bill seeks to make a number of miscellaneous amendments to the four anti-discrimination Ordinances in response to the proposals of the EOC. They include the addition of provisions to the Disability Discrimination Ordinance (DDO) and the Family Status Discrimination Ordinance (FSDO) to expressly provide protection from personal liability to members and employees of the EOC, members of a committee established by the EOC and conciliators, when they act in good faith in the performance of the EOC's functions and in the exercise of the EOC's powers under the above two anti-discrimination Ordinances. As similar protection is already provided under the existing provisions of the Sex Discrimination Ordinance and the Race Discrimination Ordinance, the Bill only proposes to add the relevant provisions to the DDO and FSDO to improve consistency between the anti-discrimination Ordinances.

Part 4 of the Bill amends section 81 of the Evidence Ordinance (EO) to explicitly empower the President, presiding officers and other members of the Lands Tribunal to issue a warrant or order to bring any person in lawful custody before the Tribunal to give evidence. In addition, Part 4 also amends the Lands Tribunal Ordinance to put it beyond doubt that a temporary member shall have the same powers and duties as a member of the Lands Tribunal.

Part 5 of the Bill seeks to amend, at the suggestion of the Hong Kong Society of Notaries, the EO to the effect that a notarial instrument may be received in evidence in civil proceedings in the courts of Hong Kong, without further proof, as duly authenticated unless the contrary is proved.

Part 6 of the Bill amends the EO and the Mutual Legal Assistance in Criminal Matters Ordinance. The amendment renders foreign public, banking, routine business and computer records obtained pursuant to mutual legal assistance requests admissible in criminal proceedings in Hong Kong as prima facie evidence of any fact stated therein if they are annexed to a deposition made according to the law of the foreign jurisdiction concerned. In short, the amendment seeks to bring the relevant law of Hong Kong in line with the laws of its major partners in mutual legal assistance matters.

Part 7 of the Bill seeks to amend section 44 of the Unsolicited Electronic Messages Ordinance (UEMO) to the effect that delivery by hand and sending by ordinary post may be adopted, in addition to sending by registered post under the existing provision, in serving notices issued by the Communications Authority pursuant to sections 34, 35, 36 and 38 of the UEMO. The amendments provide greater flexibility in the service of the notices and therefore enhance the effectiveness of the enforcement mechanism under the UEMO.

Part 8 of the Bill seeks to amend certain defence provisions in the Trade Descriptions Ordinance (TDO) to reflect the Court of Final Appeal's rulings in the case of Lee To Nei. The amendments make it clear that only an evidential burden (but not a persuasive burden) is imposed on the person charged who wishes to rely on the grounds set out in the relevant defence provisions (i.e. sections 12(2A) (a), 26(1), 26AA and 26AAB) in any proceedings for the offence concerned under the TDO.

Part 9 of the Bill seeks to implement one of the proposals included in the Interim Report of the Review Committee on the Building Management Ordinance (BMO), i.e. to amend the BMO (Cap. 344) to provide that a person appointed as a member of a management committee of a building can use a statement (instead of a declaration under the existing requirement) within 21 days after the appointment to state that the person

is not ineligible as specified in paragraph 4(1) of Schedule 2 to the BMO. The requirement of taking an oath under the existing provisions has been criticised for being too stringent as many management committee members find it very inconvenient to go to the designated venues during office hours for the purpose of making a statutory declaration. The amendment obviates the need of taking an oath for the convenience of owners intending to serve as management committee members.

Parts 10 and 11 of the Bill contain two amendments made in response to the Law Society's proposals. Part 10 seeks to repeal the consequential amendments set out in item 29 of Schedule 1 to the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 to retain the existing definition of "controlled trust" in section 26A of the Legal Practitioners Ordinance (LPO). Part 11 seeks to amend section 8A of the LPO to empower the Council of the Law Society to revoke or restore a suspension of a solicitor's practice or a foreign lawyer's registration as it considers appropriate pending a decision of the Solicitors Disciplinary Tribunal.

Parts 12 to 15 of the Bill contain miscellaneous and technical amendments to various Ordinances or subsidiary legislation made for different purposes, for example, to provide for amendments that were omitted in previous amendment exercises, to correct cross references in certain provisions, to correct technical consolidation irregularities in a few consolidation instruments and to achieve internal consistency in terminology and consistency between the Chinese and English texts of certain enactments.

President, as I mentioned at the beginning of this speech, the Bill deals with a number of amendments of various areas in a consolidated manner, as part of the Administration's continuing effort to collate Hong Kong's legislation. By dealing with the amendments in one go by way of the Bill, the relevant legislative provisions can be improved

efficiently.

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

Ends/Wednesday, April 30, 2014