

LC: Speech by SJ

Following is the speech by the Secretary for Justice, Ms Elsie Leung, to move the second reading of the Law Amendment and Reform (Miscellaneous Provisions) Bill 2003 in the Legislative Council today (March 19):

Madam President,

I move that the Law Amendment and Reform (Miscellaneous Provisions) Bill 2003 be read a second time.

The Bill is part of the ongoing process of statute law reform directed at introducing non-controversial reforms, removing anomalies, and making minor improvements which do not justify the introduction of separate bills.

Conveyancing transactions

The most significant amendments are in the field of conveyancing. Many conveyancing documents executed in the past on behalf of corporations and attested by a single director have been found not to comply with the requirements of section 23 of the Conveyancing and Property Ordinance. At the time of these documents were executed, members of the legal profession may have considered that section 23 was satisfied, but a recent court decision held that was not the case. As a result, many vendors have been unable to prove good title to their property and transfers of such properties have been clogged.

Clause 9 of the Bill is designed to overcome these problems. The proposed amendments provide for a presumption of due execution, unless the contrary is proved, for documents executed by corporations within 15 years prior to the coming into effect of the new section 23A. For those documents executed more than 15 years prior to the commencement of the section, the presumption is conclusive. The objective of the proposed amendments is to enable the clogged properties to be transferred.

The proposed presumptions would apply to documents executed in the past that are relevant to transactions entered into after the amendments come into effect. They would not affect the proof of title under transactions entered into before that time and which are pending completion.

The amendments in this area have the support of the Law Society and the Bar Association.

Legal Practitioners Ordinance

Another important provision in the Bill concerns legal education. The Steering Committee on Legal Education and Training in Hong Kong, set up in 1999, has made a number of important recommendations which are being implemented. One of these is that a new statutory body should be established to keep up the momentum of reform of the legal education and training system. The proposed amendments will provide for the establishment of a Standing Committee on Legal Education and Training to replace the existing Advisory Committee on Legal Education. The relevant provisions are in clauses 7 and 8 of the Bill, which amend the Legal Practitioners Ordinance.

The Standing Committee will be broadly based, and will be able to advise on the content of courses designed for our future legal professionals. This will help ensure that their training and skills are of sufficient quality to make them world class practitioners.

Other amendments proposed to the Legal Practitioners Ordinance will facilitate better management training for solicitors who commence unconditional practice, so that they can provide better service to clients. The opportunity is also taken to introduce amendments to improve the regulation of notaries public. These are in clauses 2 to 6 of the Bill.

Other improvements

I now turn to improvements in other areas.

At the moment, a magistrate is not empowered to award costs to a defendant if the prosecution applies for a review of the magistrate's decision under section 104 of the Magistrates Ordinance and the magistrate confirms the original decision. The Panel on Administration of Justice and Legal Services has suggested that it is unfair for defendants to bear legal costs in such circumstances, when the incurring of those costs was beyond their control. The Administration agrees with that view. Amendments are therefore proposed in clause 10 of the Bill to empower the magistrate to award costs to the defendant in such circumstances.

It is also necessary to replace references to "Crown servant" in the Prevention of Bribery Ordinance and the Independent Commission Against Corruption Ordinance. In order to preserve the scope that "Crown servant" had prior to reunification it is proposed to replace that term with "prescribed officer", which is defined. The opportunity is taken to put it

beyond doubt that principal officials, the Monetary Authority, Chairman of the Public Service Commission, staff of the Independent Commission Against Corruption and judicial officers are covered by the two Ordinances. The relevant provisions are in clauses 13 to 23.

Proceedings can be instituted in the Small Claims Tribunal and the Labour Tribunal by or against the Secretary for Justice as representative of the Administration in these tribunals. At the moment, when this occurs, the Secretary for Justice must personally authorise a person to attend as her representative before the relevant tribunal. In order to avoid the need for such authorisations, it is proposed that a public officer, not being a barrister or solicitor, should have a right of audience in such cases. It is envisaged that law clerks, where my Department is involved, or officers of other government departments would be authorised to attend to these matters. They would not be legally qualified persons and their attendance would be consistent with the spirit of the two tribunals where no legal representation is allowed. The relevant provisions are in clauses 11 and 12.

Part VII of the Bill provides for minor amendments to a number of Ordinances to ensure consistency of terminology and to ensure consistency between the Chinese and English texts.

As I indicated earlier, this Bill is part of a continuing process of tidying up Hong Kong's statute law and effecting minor reforms.

Madam President, I commend the Bill to the Council.

End/Wednesday, March 19, 2003

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