

**Speech by the Secretary for Justice
Ms Elsie Leung
in the Legislative Council on 9 March 2005**

**To move the Second Reading of the
Statute Law (Miscellaneous Provisions) Bill 2005**

Madam President,

I move that the Statute Law (Miscellaneous Provisions) Bill 2005 be read a second time.

2. The Bill largely makes minor, technical and non-controversial amendments to the Laws of Hong Kong. In that respect, it follows the pattern of similar bills which have been enacted in recent years as an efficient way of effecting improvements to existing legislation. The Bill also includes some proposed minor reforms to our laws. The Bill is divided into six Parts. Part 1 contains preliminary provisions. Parts 2 to 6 propose amendments to various Ordinances.

Part 2 – Transfer of functions and powers

Part 2 provides for the transfer of certain statutory functions and powers, and contains five divisions.

3. Division 1 transfers to the Secretary for the Civil Service certain functions of the Chief Secretary for Administration. Following the implementation of the Accountability System, it is necessary for certain pension-related functions to be transferred from the Chief Secretary for Administration to the Secretary for the Civil Service, who is the Principal Official responsible for civil service matters.

4. Division 2 amends the Oaths and Declarations Ordinance (Cap. 11) to transfer to the Director of the Chief Executive's Office the function of the Chief Secretary for Administration to administer the Oath of Secrecy taken by the Clerk or Deputy Clerk to the Executive Council. This transfer reflects the fact that the Executive Council Secretariat is now under the Chief Executive's Office.

5. Division 3 transfers to the Administrative Appeals Board the function of the Chief Executive in Council to determine appeals under the Medical Clinics Ordinance (Cap. 343).

6. Division 4 transfers the chairmanship of certain committees from the Chief Justice to the Chief Judge of the High Court. Division 5 transfers the rule-making and related powers in the Matrimonial Causes Ordinance (Cap. 179) from the Chief Justice to the Chief Judge of the High Court.

Part 3 – Change of names, enhancement of operational efficiency and refinement of statutory provisions

Part 3 of the Bill provides for a certain change of name; it enhances operational efficiency in certain areas; and it refines certain statutory provisions. There are nine divisions in Part 3.

7. Division 1 changes the Chinese name of the Convocation of The Chinese University of Hong Kong from “評議會” to “校友評議會”. This follows advice from the Chinese University of Hong Kong that the current Chinese name of the Convocation of the University does not accurately reflect its composition.

8. Division 2 amends the Legal Aid Services Council Ordinance (Cap. 489) to empower the Legal Aid Services Council to do such things as are necessary to enable it to exercise its functions (including entering into contracts) and to appoint staff, and to extend the time limit within which the Council must submit an annual report to the Chief Executive. The amendments will enhance the operational efficiency of the Legal Aid Services Council.

9. Division 3 amends the Trade Marks Ordinance (Cap. 559) to clarify when the period of six months referred to in section 41(1) of the Ordinance commences, and to clarify the meaning of the expression "owner" in section 55(2) of that Ordinance. The proposed amendments reflect the original intention of the relevant provisions.

10. Division 4 amends the Theft Ordinance (Cap. 210) to bring the definition of "deception" in the Ordinance into line with the definition of "deceit" in the Ordinance.

11. Division 5 amends the Crimes Ordinance (Cap. 200) to require consent to be given for the prosecution of a conspiracy to commit any offence where consent is needed for the prosecution of the offence itself.

12. Division 6 amends the Firearms and Ammunition Ordinance (Cap. 238) to make possession of imitation firearms an indictable offence, triable in the District Court and Court of First Instance. Without the amendment, there would be an anomaly in that a magistrate is empowered to impose imprisonment of seven years for the offence of possessing an imitation firearm under that Ordinance.

13. Division 7 amends the Prevention of Bribery Ordinance (Cap. 201) to prohibit a person from leaving Hong Kong if he is subject to investigation by the Independent Commission Against Corruption (ICAC) on reasonable suspicion of having committed an offence under the Ordinance and has, by written notice, been required by a magistrate to surrender all his travel documents. It clarifies that Police officers and persons appointed by the Commissioner of ICAC have the power to arrest the first-mentioned person for failure to comply with the notice.

14. Division 8 amends the Costs in Criminal Cases Ordinance (Cap. 492) to empower the Court of Appeal and Court of First Instance to award costs to the prosecutor or defendant on the other party's unsuccessful application for a certificate under the Hong Kong Court of Final Appeal Ordinance (Cap. 484). Section 32 of the Ordinance provides that, before leave to appeal is granted, it must be certified that the case involves a point of law of great and general importance or grave injustice has been done. It is anomalous that the court has no power to order costs where the prosecutor or a defendant applies unsuccessfully for a section 32 certificate.

15. Division 9 repeals provisions in 16 Ordinances which prevent any further appeal of a decision beyond the Court of Appeal. This reflects the Court of Final Appeal's judgment in A Solicitor v The Law

Society of Hong Kong, which held that section 13(1) of the Legal Practitioners Ordinance (Cap.159) was unconstitutional, since it provided that a decision by the Court of Appeal in respect of disciplinary proceedings concerning a solicitor shall be final.

Part 4 – Amendments relating to judicial officers

Part 4 of the Bill relates to judicial officers, and contains three divisions.

16. Division 1 amends the Judicial Officers Recommendation Commission Ordinance (Cap. 92) to require a member of the Commission who may be selected to fill a judicial vacancy to disclose whether or not, if he were to be selected, he is willing to accept appointment. Division 2 updates the list of judicial offices covered by the Judicial Officers Recommendation Commission Ordinance. Division 3 amends some court-related Ordinances to further provide for the professional qualifications for certain judicial offices.

Part 5 – Legal education and Legal practitioners

Part 5 of the Bill relates to legal education and legal practitioners, and contains two divisions.

17. Division 1 amends the Legal Practitioners Ordinance to include two representatives of The Chinese University of Hong Kong in the Standing Committee on Legal Education and Training established by that Ordinance. The amendments are required since The Chinese University of Hong Kong is about to establish a new law school. The other tertiary institutions which have a law school are also represented in the Committee.

18. Division 2 amends the Legal Practitioners Ordinance to make it clear that the Council of The Law Society of Hong Kong may make rules to provide for the professional practice of any solicitor and to make indemnity rules in respect of any solicitor's practice, whether or not the solicitor is engaged in private practice.

Part 6 – Miscellaneous amendments of a minor nature

19. Part 6 contains miscellaneous amendments of a minor nature. It rectifies a number of textual errors, inconsistencies and other minor irregularities which have been identified in our legislation.

Conclusion

20. Madam President, as I indicated earlier, this Bill is part of a continuing process of tidying up Hong Kong's statute law and effecting minor reforms. I commend the Bill to the Council.