

**Speech by the Secretary for Justice,
Ms Elsie Leung
in the Legislative Council on 29 June 2005**

**Resumption of the Second Reading Debate on the
Statute Law (Miscellaneous Provisions) Bill 2005**

Madam President,

As I explained when I introduced the Statute Law (Miscellaneous Provisions) Bill into the Council on 9 March 2005, this Bill largely makes minor, technical and non-controversial amendments to the Laws of Hong Kong.

2. Since the introduction of the Bill, the Bills Committee, chaired by the Hon Margaret Ng, has thoroughly examined the clauses, which relate to a wide variety of issues in different areas of the law. I am most grateful to the Chairman and members of the Bills Committee, namely the Hon Albert HO Chun-yan, the Hon Miriam LAU Kin-ye, the Hon Audrey EU

Yuet-mee, and the Hon KWONG Chi-kin, for their hard work and helpful contributions, and for producing a very detailed report on the Bill, comprising 14 pages with 58 paragraphs excluding appendix. It has been succinctly summarized by the Chairman just now. We have proposed some changes to the Bill which have been agreed by the Bills Committee. As a result, I will be moving a number of Committee Stage amendments later this afternoon. I will now give a brief outline of the more important of these amendments.

CJ's Rule-making powers

3. The first set of Committee Stage amendments relates to the amendments in Part 2 Divisions 4 and 5 of the Bill, which transfer the chairmanship of the High Court Rules Committee, the Criminal Procedure Rules Committee and the District Court Rules Committee, as well as certain rule-making and related powers under the Matrimonial Causes Ordinance (Cap. 179) from the Chief Justice to the Chief Judge of the High Court.

4. The Judiciary has proposed such transfer because the rules made by those Rules Committees and under the Matrimonial Causes Ordinance (Cap. 179) mainly deal with proceedings in the High Court and the District Court. Proceedings of the District Court follow largely those of the High Court. It is therefore considered more appropriate for the CJHC, as the court leader of the High Court, to take up these functions.

5. Since the publication of the Bill, the Judiciary has noted that, notwithstanding the transfer of the chairmanship of the three Rules Committees, the CJ has residual rule-making powers under the High Court Ordinance (Cap. 4), the Criminal Procedure Ordinance (Cap. 221) and the District Court Ordinance (Cap. 336). The Judiciary has therefore proposed CSAs to transfer these residual rule-making powers from the Chief Justice to the Chief Judge.

6. The Hon Margaret Ng has expressed reservation about the transfer of the chairmanship of the Criminal

Procedure Rules Committee from the Chief Justice to the Chief Judge, as this Rules Committee deals with not only procedural matters but also policy matters such as rules involving legal aid fees in criminal cases.

7. The Chief Justice has asked me to assure Hon Members that, notwithstanding the transfer of the Chairmanship of this Rules Committee, the Chief Judge, apart from keeping the Chief Justice generally informed about its work, would consult him on matters of policy arising in the work of the Committee. Through such consultation, the Chief Justice would continue to take a close interest and be involved in any policy matters including reforms of criminal legal aid fees. I shall likewise convey the Hon Margaret Ng's remarks this afternoon to the Chief Justice.

Prohibiting departures

8. The second set of amendments relates to a person who is required to surrender his travel documents.

(a) Prevention of Bribery Ordinance

9. Under section 17A of the existing Prevention of Bribery Ordinance (Cap. 201), a magistrate may, on the application *ex parte* of the Commissioner, ICAC, require a person who is the subject of ICAC investigation of an offence under that Ordinance to surrender any travel document in his possession. After a person has surrendered all his travel documents pursuant to section 17A, he may make application to the Commissioner or a magistrate or both for return of the documents under section 17B.

10. Members of the Bills Committee pointed out that, once clauses 35 and 36 of the Bill were passed, a person who was required to surrender his travel documents under section 17A would be prohibited from leaving Hong Kong. Although that person might apply for the return of his travel documents under section 17B, there was no provision to enable him to apply for permission to depart from Hong Kong.

11. The Administration therefore agreed to move CSAs so as to allow application for permission to leave Hong Kong under the Prevention of Bribery Ordinance (Cap. 201), without the necessity of applying for the temporary return of travel documents.

(b) Dangerous Drugs Ordinance

12. As pointed out by Members of the Bills Committee, a legal loophole similar to section 17A of the Prevention of Bribery Ordinance (Cap. 201) also exists in the Dangerous Drugs Ordinance (Cap. 134) in that, under the Easy Travel Scheme, whilst a person may have surrendered his travel documents, he is not prohibited by s.53A from leaving Hong Kong and may actually do so using his Hong Kong identity card.

13. In response to Members' suggestion, CSAs to the Dangerous Drugs Ordinance (Cap. 134) are proposed to plug the loophole. The amendments are similar to the relevant provisions being added to the Prevention of

Bribery Ordinance (Cap. 201). Specifically, the proposed amendments seek to:

- (a) add a new provision to section 53A providing that the subject of a section 53A(1) notice shall not leave Hong Kong for three months from the date of the notice, which is in line with the period for which a surrendered travel document can be detained. This period of three months may be further extended in line with the detention period of the travel document under section 53A; and
- (b) add a new provision to enable a subject of a section 53A(1) notice to apply for permission to leave Hong Kong.

Immitation firearms

14. Madam President, let me now turn to the

amendments relating to possession of imitation firearms.

15. It was proposed that section 20 of the Firearms and Ammunition Ordinance (Cap. 238) be amended. The intention was to make “possession of an imitation firearm” an indictable offence. After the publication of the Bill, leave to appeal to the Hong Kong Court of Final Appeal was granted by the Appeal Committee on the point of law relating to the reverse burden of proof provided under section 20(3). It is anticipated that a date for the hearing will not be fixed before the end of this year. Section 20 may have to be amended in some other way in the light of the decision on final appeal, and we do not want the Bill to be delayed. The Administration therefore proposes to withdraw the proposed amendments to the Firearms and Ammunition Ordinance (Cap. 238).

Other matters

16. I will also be moving amendments to clauses

37 and 38 of the Bill, which relate to the proposed sections 9B and 13B of the Costs in Criminal Cases Ordinance (Cap. 492). The amendments will make it clear that prosecution and defence costs on unsuccessful applications will only be granted in unmeritorious cases. Other minor and technical issues will also be dealt with in the agreed Committee Stage amendments. The Administration will also follow up the matters set out in paragraph 55 of the Report which we have undertaken to do. I am most grateful to the Hon Margaret Ng's kind remarks on the co-operation between the Bills Committee and the Administration. I am sure that such remarks will encourage colleagues of the Administration to work harder in future in order that the laws passed in this Chamber will be promulgated smoothly and efficiently.

Conclusion

17. Madam President, with these remarks and subject to the Committee Stage amendments proposed by the

Administration, I commend the Bill to Honourable Members.