

(English Translation)

**Speech by the Secretary for Justice
Hon Wong Yan Lung, SC, JP
In the Legislative Council on 25 April 2007
To move the Second Reading of the
Statute Law (Miscellaneous Provisions) Bill 2007**

Madam President,

I move that the Statute Law (Miscellaneous Provisions) Bill 2007 be read a second time.

2. The Bill largely makes minor, technical and non-controversial amendments to the Laws of Hong Kong. The amendments are made with reference to 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 14 Parts. Part 1 contains preliminary provisions. Parts 2 to 14 propose amendments to various Ordinances.

PART 2 - Discharge from bankruptcy

3. Part 2 repeals section 30A(10)(b)(i) of the Bankruptcy Ordinance (Cap. 6) which was struck down by the Court of Final Appeal in a ruling in July 2006 as being unconstitutional. The section relates to the extension of the prescribed bankruptcy period in circumstances where a bankrupt leaves Hong Kong without notifying his trustee in bankruptcy. The Court of Final Appeal declared that the section went beyond what was necessary for the protection of the rights of creditors and unreasonably restricted the right to travel guaranteed under the Basic Law and the Hong Kong Bill of Rights, and hence was unconstitutional. As the effect of the Court of Final Appeal judgment is that section 30A(10)(b)(i) is considered void from the outset and has no legal effect, it should be removed from the statute book.

PART 3 – Amendments to References to “Ordre Public” in the Societies Ordinance and the Public Order Ordinance

4. Part 3 repeals references to “(*ordre public*)” in the term “public order” in the Societies Ordinance (Cap. 151) and the Public Order Ordinance (Cap. 245). This amendment is in conformity with a Court of Final Appeal judgment in 2005 to the effect that the term “public order” in the law and order sense suffices in the context of the relevant provisions since it means the maintenance of public order and the prevention of public disorder and crime, whereas the meaning of “*ordre public*” is wider and encompasses the fundamental principles of a democratic society.

PART 4 – Amendments Relating to Suicide of Another Person

5. Part 4 repeals the words “killing himself or” from section 5(1) and (2) of the Homicide Ordinance (Cap. 339) to reflect the abolition of the offence of suicide.

6. Section 5(1), as it stands, provides that it shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by another person. However, in 1967, the crime of suicide or self-murder was abolished by the enactment of section 33A of the Offences Against the Person Ordinance (Cap. 212). Section 33B of Cap. 212 made it clear that being a party to another person’s suicide was no longer murder but was the new statutory offence of “complicity in another’s suicide” which carries a maximum penalty of 14 years’ imprisonment.

PART 5 – Penalty for Perverting the Course of Justice at Common Law

7. Part 5 adds a new subsection (5) to section 101I of the Criminal Procedure Ordinance (Cap. 221) to remove the current maximum penalty of seven years’ imprisonment for the offence of perverting the course of justice at common law. There will be no fixed maximum penalty, the court may impose a sentence that is appropriate to the seriousness of the offence in accordance with the established sentencing guidelines.

PART 6 – Power of Magistrate to Award Costs

8. Part 6 amends sections 3A and 3B of the Fixed Penalty (Criminal Proceedings) Ordinance (Cap. 240) to empower a magistrate to order a person who has committed an offence to pay costs if that person has not paid the relevant fixed penalty or notified the Commissioner of Police that he wishes to dispute liability. Consequential amendments are also made to sections 10 and 10A of that Ordinance.

PART 7 – Wasted Costs in Criminal Proceedings

9. Part 7 amends section 2 of the Costs in Criminal Cases Ordinance (Cap. 492) to enable the court in criminal cases to order the legal or other representative of one party to bear any costs incurred by another party as a result of the improper or unreasonable act, or delay or default on the part of the legal or other representative of the first mentioned party. Part 7 also amends section 18 of that Ordinance to provide that the court shall take into account the interest of fearless advocacy under the adversarial system of justice when determining whether to make a wasted costs order.

10. The proposed amendment is a response to criticism by the Court of Appeal, in a number of decided cases, of the narrow scope of the existing provisions, the application of which is confined to occasions on which legal representatives fail to appear or are late. For example, where an appeal had to be adjourned because counsel was double-booked, the Court of Appeal held that it had no power to make a wasted costs order within the wording of the wasted costs provisions. This is undesirable. We hence propose the amendment in response to the Court of Appeal's criticism.

PART 8 – Amendments to Provisions Providing that the Decision of the Court of First Instance on an Appeal is Final

11. Part 8 amends the Fire Service (Installation Contractors) Regulations (Cap. 95 sub. leg. A), the Pharmacy and Poisons Ordinance (Cap. 138) and the Lifts and Escalators (Safety) Ordinance (Cap. 327) to repeal provisions providing that the decision of the Court of First Instance on an appeal is final, and provide for the events in which an appeal shall be deemed to be finally determined.

12. In December 2003, the Court of Final Appeal, in *A Solicitor v The Law Society of Hong Kong & Secretary for Justice (Intervener)*, held that the finality provision in section 13(1) of the Legal Practitioners Ordinance (Cap. 159) was invalid. Section 13(1) of Cap. 159 provided that subject to certain exceptions, “an appeal against any order made by a Solicitors Disciplinary Tribunal shall lie to the Court of Appeal”. It also included the provision that “the decision of the Court of Appeal on any such appeal shall be final”.

13. Sixteen Ordinances were subsequently identified as containing finality provisions which were identical to the finality provision in section 13(1) of Cap. 159 in all material aspects. These provisions were amended under the Statute Law (Miscellaneous Provisions) Ordinance 2005. In the light of the above developments, it is considered necessary to amend the relevant provisions by Part 8 of the Bill.

PART 9 – Amendments Consequential to the Rules of the High Court (Amendment) Rules 2000 in Relation to the Time for Serving Notice of Motion of Appeal

14. Part 9 amends the Rules of the High Court (Cap. 4 sub. leg. A) and the Legal Practitioners Ordinance (Cap. 159) to provide for consequential amendments that were not included in the previous amendment exercises.

PART 10 – Amendments Relating to the Legal Practitioners Ordinance

15. Part 10 amends the Legal Practitioners Ordinance (Cap. 159) in the definition of “Postgraduate Certificate in Laws”, to cover the Postgraduate Certificate in Laws to be awarded by The Chinese University of Hong Kong; and to require a firm of solicitors which intends to employ a solicitor or foreign lawyer, who is bankrupt, to apply to The Law Society of Hong Kong for written permission.

PART 11 – Amendments to Remove Certain Minor Inconsistencies

16. Part 11 amends certain provisions in the Prevention of Bribery Ordinance (Cap. 201) and the Independent Commission Against

Corruption Ordinance (Cap. 204) to remove certain minor inconsistencies between the English and Chinese texts.

PART 12 – New powers to Substitute Dates and Titles of Subsidiary Legislation

17. Part 12 adds the following two new powers to the Secretary for Justice in the Interpretation and General Clauses Ordinance (Cap. 1) –

- (a) a new power to amend any Ordinance or subsidiary legislation to replace a general reference to a date with an actual calendar date; and
- (b) a new power to amend any subsidiary legislation to replace a general reference to other subsidiary legislation with the title or citation, gazette number or chapter number of that subsidiary legislation.

PART 13 – Minor and Technical Amendments

18. Part 13 contains minor and technical amendments to various Ordinances.

PART 14 – Amendments to Achieve Internal Consistency and Consistency between the English and Chinese Texts

19. Part 14 contains amendments of a minor nature to a number of Ordinances to achieve internal consistency and consistency between the English and Chinese texts.

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.