

For information

**Legislative Council Panel on
Administration of Justice and Legal Services**

Statute Law (Miscellaneous Provisions) Bill 2020

Purpose

This paper briefs Members on the Government's proposal to introduce a Statute Law (Miscellaneous Provisions) Bill 2020 ("Bill") to effect a number of miscellaneous amendments to various ordinances.

General Background

2. The Government has been using statute law (miscellaneous provisions) bills (i.e. "omnibus bills") in appropriate cases as an efficient way of effecting miscellaneous amendments to update or improve existing legislation from time to time. The amendments included are largely minor, technical and non-controversial in nature but are important for the purpose of updating or improving existing legislation. This avoids the need to make bids for separate slots relating to each Ordinance, the amendments to which typically involve only a few clauses.

3. The last Statute Law (Miscellaneous Provisions) Ordinance was enacted in 2018. It has since become necessary to introduce another omnibus bill to make miscellaneous amendments to various Ordinances.

Outline of the Proposed Amendments

4. The proposed amendments to be included in the Bill can be broadly categorised into five groups.

(A) High Court Ordinance (Cap. 4)

5. The Judiciary Administration ("JA") issued a paper (LC Paper No. CB(4)1007/18-19(07)) and briefed Members on the proposed amendments to

the *High Court Ordinance* (Cap. 4) (“**HCO**”) at the AJLS Panel meeting on 24 June 2019. To recap, the rapid surge in civil caseloads in recent years, particularly those initiated by way of judicial review (“**JR**”) for cases stemming from non-refoulement claims, has imposed great pressure on the workload of the Judiciary, in particular for the High Court (comprising the Court of First Instance (“**CFI**”) and the Court of Appeal (“**CA**”)) and the Court of Final Appeal (“**CFA**”).

6. To ensure that all cases are handled as expeditiously as is reasonably practicable, the Judiciary proposed the following amendments to the HCO:

- (a) to amend section 34B(4) of the HCO to extend the use of a 2-Judge bench of the CA (i.e. 2-Judge CA)¹ to determine:
 - (i) applications for leave to appeal to the CFA against the decisions made by the CA consisting of less than 3 Justices of Appeal; and
 - (ii) appeals against the CFI decisions to refuse to grant leave to apply for JR or to grant such leave on terms;
- (b) to amend section 34B(5) of the HCO so that when the 2-Judge CA in various types of proceedings cannot reach a unanimous decision, in addition to a party being allowed to apply to re-argue the case before a 3-Judge CA, the Court may also make such an order on its own motion;
- (c) to amend section 34B(4) of the HCO to streamline the procedure for application for leave to appeal to the CFA so that if a substantive civil appeal decision is made by a 2-Judge CA, the subsequent application for leave to appeal to the CFA could be heard by a 2-Judge CA.² If the substantive civil appeal decision is made by a 3-Judge CA, the subsequent application for leave to appeal to the CFA would continue to be heard by a 3-Judge CA; and
- (d) to amend sections 4(2) and 5(2) of the HCO to clarify that an

¹ Pursuant to section 34B(2) of the HCO, the CA is deemed duly constituted for the purposes of exercising civil jurisdiction when it consists of an uneven number of Justices of Appeal not less than 3 (i.e. 3-Judge CA). Section 34B(4) provides that certain types of civil proceedings can be heard by a 2-Judge CA.

² Currently, no appeal to the CFA is admitted unless leave to appeal has been granted either by the CA or CFA itself. At the CA level, section 34B(4)(aa) of the HCO provides that all applications for leave to appeal can be heard by a 2-Judge CA except for an application for leave to appeal to the CFA, which will be heard by a 3-Judge CA.

additional judge in the CFI or the CA has the power to dispose of cases on paper without physically “sitting” in court.³

7. At the AJLS Panel meeting on 24 June 2019, Members generally supported the introduction of the proposed amendments. In addition, the JA conducted a consultation with the Law Society of Hong Kong (“**the Law Society**”) and the Hong Kong Bar Association (“**HKBA**”) from 17 June 2019 to 6 September 2019. The Law Society indicated general support for the proposed amendments. The HKBA provided its comments on the Judiciary’s proposals vide LC Paper No. CB(4) 1058/18-19(02) dated 21 June 2019, and at the AJLS Panel meeting on 24 June 2019. To address the HKBA’s comments, the JA elaborated further on the justifications and necessity of the proposals to streamline court procedures and promote efficiency in handling cases and reiterated that the established mechanism to ensure high standards of fairness in a proceeding would in no way be affected by the proposed amendments. The JA’s reply to the HKBA dated 2 September 2019 was circulated to Panel Members via LC Paper No. CB(4) 1201/18-19(02). The JA’s further letter to the AJLS Panel was set out in LC Paper CB(4)1201/18-19(01). The HKBA indicated no further comment subsequently.

(B) Legal Practitioners Ordinance (Cap. 159) and the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 (94 of 1997)

8. Part II of the *Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997* (94 of 1997) (“**1997 Ordinance**”) amends the *Legal Practitioners Ordinance* (Cap. 159) (“**LPO**”) to permit the formation of solicitor corporations and foreign lawyer corporations as business models for solicitors and foreign lawyers’ practices and provide for their regulation.⁴ The Law Society has recently reviewed the relevant provisions and identified further amendments that are required.

9. While the LPO, when read together with the 1997 Ordinance, requires the Secretary General of the Law Society to keep a roll of solicitor corporations, there is no corresponding provision for a roll of foreign lawyer corporations to be kept. The Law Society proposes to amend section 2(1) of

³ Sections 4(2) and 5(2) of the HCO provide respectively that a Justice of Appeal may sit in the CFI and act as a judge thereof, and a CFI judge may sit as an additional judge in the CA. There are ambiguities as to whether such an additional judge could only exercise his/her judicial power when physically ‘sitting’ in the court or whether he/she could exercise his/her judicial power to dispose of a case on paper.

⁴ The amendments have not yet come into operation.

the LPO and add a new section 39BAA to the LPO to provide for the Secretary General to also keep a roll of foreign lawyer corporations.

(C) Interpretation and General Clauses Ordinance (Cap. 1)

10. It is proposed to amend section 13 of the Interpretation and General Clauses Ordinance (Cap. 1) (“**IGCO**”) so that references made to an Ordinance, in accordance with section 13(1) of IGCO, may be made according to the title, short title, citation, number or chapter number used in the verified copies of the Ordinance published under the Legislation Publication Ordinance (Cap. 614), in addition to those used in copies of the Ordinance printed by the Government Printer. A definition of *verified copies* is also added.

(D) Amendments to the Chinese text of certain defence provisions containing the “could not with reasonable diligence” references

11. According to *HKSAR v Kong Hing Agency Ltd* [2008] 1 HKC 462, the Court interpreted the statutory defence containing the phrase “could not with reasonable diligence have (done something)” to refer to an objective test of what a person “could have been reasonably expected to have done in the circumstances”. In other words, the defence refers to a hypothetical situation. In the judgment of *香港特別行政區 v 楊啟強* [2018] 2 HKLRD 1320, the Court commented that there are variations in the Chinese expression of the defence adopted in some provisions and invited the Department of Justice to consider whether it is necessary to follow up on the variations.

12. In light of the comments from the courts, amendments are proposed to fine-tune the Chinese expression for the above defence appearing in certain legislative provisions to make it explicit that the test is an objective one based on a hypothetical situation. Other minor textual fine tunings are also made for consistency.

(E) Other Miscellaneous Amendments

13. Miscellaneous, technical amendments are also proposed to various legislative provisions to, for example, to update the references to the titles of certain Ordinances, achieve consistency in certain expressions, repeal provisions that were superseded by subsequent amendments before they came into operation, and to make provisions for correcting other minor errors.

Way Forward

14. Members are invited to take note of the proposals in this paper. Comments or requests for information may be directed at Ms Joey Ma, Senior Government Counsel (Tel: 3918 4048, email: lpd@doj.gov.hk). Given the technical and straightforward nature of the proposed amendments, it is the Government's intention to introduce the Bill into the Legislative Council as soon as practicable within this legislative session.

Department of Justice
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