

For information

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

Statute Law (Miscellaneous Provisions) Bill 2024

Purpose

This paper briefs Members on the Government’s proposal to introduce a Statute Law (Miscellaneous Provisions) Bill 2024 (“**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 2020. It has since become necessary to introduce another omnibus bill to make miscellaneous amendments to various ordinances. Opportunity is also taken to make straightforward adaptation of colonial references and repeal obsolete provisions in various ordinances in a consolidated manner. Time is now ready to introduce another omnibus bill to cater for these proposed amendments.

Outline of the Proposed Amendments

4. The proposed amendments in the Bill can be broadly categorised into two groups – (1) amendments without adaptation of laws elements; and (2) amendments with adaptation of laws elements.

(1) Amendments without adaptation of laws elements

5. The proposed amendments in this category are largely minor, technical and non-controversial amendments that do not involve adaptation of laws elements. The key proposed amendments are highlighted in the ensuing paragraphs.

(a) Evidence Ordinance (Cap. 8)

6. The Government Microfilm Centre, which is operated under the Preservation Service Office of the Government Records Service (“GRS”), Administration Wing of the Chief Secretary for Administration’s Office (“CSO”), accepts requests from bureaux and departments to microfilm inactive records which have to be retained for not less than seven years. Those original paper records without archival value will be destroyed as approved by the GRS Director upon completion of microfilm production.

7. Due to the imminent obsolescence of traditional microfilming equipment and the fading out of its maintenance service, the GRS has a pressing need to digitalise its microfilming production by implementing Computer Output Microfilm (“COM”). However, sections 39 and 40 of the Evidence Ordinance (Cap. 8), which provide for the admissibility of prints made from “film” as evidence in civil and criminal proceedings, may not apply to COM.

8. CSO proposes to amend the definition of “film” in section 41 of the Evidence Ordinance (Cap. 8) so as to include a microfilm the production of which involves digital means. The definition will cover microfilm produced through digital workflow to accommodate the evolution of the microfilming technology in future.

(b) Contracts for Employment Outside Hong Kong Ordinance (Cap. 78)

9. Arising from the abrogation of three International Labour Conventions (ILCs) by the International Labour Organization on 5 June 2018, namely, Recruiting of Indigenous Workers Convention, 1936 (ILC No. 50), Contracts of Employment (Indigenous Workers) Convention, 1939 (ILC No. 64) and Contracts of Employment (Indigenous Workers) Convention, 1947 (ILC No. 86), the Labour and Welfare Bureau proposes to repeal section 11(1)(h) of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78), which makes a direct reference to the abrogated ILC No. 64.

(c) Post Office Ordinance (Cap. 98) and its subsidiary legislation

10. The Post Office Ordinance (Cap. 98) (“**Cap. 98**”) contains various provisions in relation to certain obsolete services and functions of the Hongkong Post (“**HKP**”) that have either never been provided by the HKP or have already ceased. These services and functions include money orders, telegraph money orders, postal orders and postal notes (referred to in, for example, section 3(h) and (k) of Cap. 98), private travelling letter boxes (referred to in, for example, section 3(m) of Cap. 98) and the issuing of licences to any persons “to collect letters for transmission to China through the Post Office, and to receive clubbed packets from China through the Post Office” (section 6(2) of Cap. 98). The Commerce and Economic Development Bureau (“**CEDB**”) proposes to repeal the relevant provisions in Cap. 98 and to make consequential amendments, including those concerning the related offences, while providing for the saving provisions to the effect that the existing exemptions from liability provided under section 7(3) and (4) of Cap. 98 continue to apply to the Government as if those subsections had not been repealed. It is also proposed to consequentially repeal regulation 19 of the Post Office Regulations (Cap. 98 sub. leg. A), which concerns the operational details of money orders. CEDB also proposes to amend an obsolete reference (i.e. “Postal Department”) in section 2(1) of Cap. 98.

(d) Immigration Ordinance (Cap. 115)

11. The Security Bureau (“**SB**”) and the Immigration Department (“**ImmD**”) propose to repeal paragraph 3(1)(c) of Schedule 1 to the

Immigration Ordinance (Cap. 115) (“**Cap. 115**”) following the ruling of the Court of Final Appeal in *Prem Singh v Director of Immigration* [2003] 1 HKLRD 550 (“**CFA Judgment**”).

12. According to Article 24(2)(4) of the Basic Law, a person not of Chinese nationality is a Hong Kong permanent resident on the condition that the person has entered Hong Kong with a valid travel document, has ordinarily resided in Hong Kong for a continuous period of not less than seven years and has taken Hong Kong as the person’s place of permanent residence. The detailed arrangements for implementing Article 24(2)(4) of the Basic Law are set out in paragraphs 2(d) and 3 of Schedule 1 to Cap. 115.

13. Before the CFA Judgment, it was provided in paragraph 3(1)(c) of Schedule 1 that a person not of Chinese nationality had to be “settled” in Hong Kong when the person made a declaration to the Director of Immigration that he or she had taken Hong Kong as his or her place of permanent residence in accordance with paragraph 3(1)(b) of Schedule 1. It is further provided in paragraph 1(5) of Schedule 1 that a person is “settled” in Hong Kong if the person is ordinarily resident in Hong Kong and is not subject to any limit of stay (i.e. on unconditional stay status). In other words, before the CFA Judgment, non-Chinese nationals had to obtain unconditional stay status before they were eligible to apply for Hong Kong permanent resident status.

14. The Court of Final Appeal held that the “settled” requirement in paragraph 3(1)(c) of Schedule 1 to Cap. 115 contravenes Article 24(2)(4) of the Basic Law. As a result of and in line with the CFA Judgment, non-Chinese persons applying for Hong Kong permanent resident status are no longer required to obtain unconditional stay status beforehand. This has come into effect since 16 June 2003 and the Legislative Council Panel on Security was briefed in the same year.

15. In view of the CFA Judgment, SB and ImmD propose to repeal paragraph 3(1)(c) of Schedule 1 to Cap. 115.

(e) Criminal Procedure Ordinance (Cap. 221)

16. Section 113C of the Criminal Procedure Ordinance (Cap. 221) is

proposed to be amended by refining the meaning of *excluded fine* to also cover a fine or penalty that is calculated by reference to a unit of time, a unit of measurement or a specified number of persons or objects. The enactments listed in section 113C(1)(c) are also to be removed for simplicity and updatedness.

(f) Hong Kong Auxiliary Police Force Ordinance (Cap. 233)

17. SB and the Hong Kong Police Force (“HKPF”) propose to amend sections 14(m), 15(1), 15(2) and 26 of the Hong Kong Auxiliary Police Force Ordinance (Cap. 233) (“**Cap. 233**”) to align the discipline system of the Hong Kong Auxiliary Police Force with that of the HKPF as provided under the Police (Discipline) Regulations (Cap. 232 sub. leg. A) (“**Cap. 232A**”).

18. There is a disciplinary offence in relation to the HKPF similar to that of “conduct calculated to bring the Force into disrepute” provided under section 14(m) of Cap. 233. The Court of Appeal ruled in *Chiu Hoi Po v. Commissioner of Police* [2008] 4 HKLRD 67 that, in the context of Cap. 232A, the English word “calculated” in the said offence did not require a subjective intention on the part of the defaulter to bring the public service into disrepute. As a result, the word “calculated” in the said offence in Cap. 232A was replaced with the word “likely” to make this clear. It is proposed to align the wording of the relevant disciplinary offence in Cap. 233 with that in Cap. 232A by replacing the word “calculated” with “likely”. The proposed amendment would not apply in relation to a defaulter who is notified of the conduct of proceedings for the offence concerned before the commencement date of the amendment.

19. Further, it is proposed to amend section 15(1) and (2) of Cap. 233 to clarify that appeals from the Boards of Discipline are to be made by way of petition in writing to the Commissioner (i.e. the Commissioner of Police or a deputy commissioner) or the Chief Executive (as the case requires), and to amend section 26 of Cap. 233 to clarify that appeals from any decision of the Commissioner upon any complaint by a member of the Hong Kong Auxiliary Police Force are to be made by way of petition in writing to the Chief Executive.

(g) District Court Ordinance (Cap. 336)

20. The Prosecution is entitled to appeal against an acquittal in the District Court by way of case stated. No procedural rules are made under the District Court Ordinance (Cap. 336) (“**Cap. 336**”) for such appeals. Instead, the procedural arrangements on “the preparation, amendment and setting down of such case stated” are governed by sections 106 to 109 of the Magistrates Ordinance (Cap. 227) (“**Cap. 227**”), with the necessary modifications, in accordance with section 84(a) of Cap. 336. However, the provisions on service under section 115 of Cap. 227 is not expressly referred to in Cap. 336. There is an uncertainty as to whether section 115 of Cap. 227 applies to case stated appeals from District Court cases. Significantly, the Court of Appeal recently recommended in *律政司司長 對 張浩輝及另四人* [2023] HKCA 877, CACC 277 & 278/2021 that consideration should be given to amending the relevant provisions.

21. It is proposed to amend section 84(a) of Cap. 336 by clearly stating that section 115 of Cap. 227 applies in relation to case stated appeals from District Court cases lodged by the prosecution.

(h) Water Pollution Control (Mirs Bay Water Control Zone) Order (Cap. 358 sub. leg. S)

22. The reference to the maps of the Mirs Bay Water Control Zone in the Water Pollution Control (Mirs Bay Water Control Zone) Order (Cap. 358 sub. leg. S) (“**Cap. 358S**”) is proposed to be updated by the Environment and Ecology Bureau (“**EEB**”). The proposed amendment to the Schedule to Cap. 358S to refer to a new series of maps seeks to reflect the changes made to the Statement of Water Quality Objectives (Mirs Bay Water Control Zone) (Cap. 358 sub. leg. U) and the Fish Culture Zone (Designation) Order (Cap. 353 sub. leg. B) in late 2023.

(i) Legislation Publication Ordinance (Cap. 614)

23. With a view to maintaining the consistency of style and formatting of the statute book more efficiently, the Legislation Publication Ordinance (Cap. 614) is to be amended by introducing powers to make

formatting amendments to database instruments and to amend the square-bracketed cross-references in Schedules etc.

(j) Private Healthcare Facilities Ordinance (Cap. 633)

24. Under section 82(1)(c) of the Private Healthcare Facilities Ordinance (Cap. 633) (“**Cap. 633**”), a substitute decision maker of the patient of a private healthcare facility for which a licence is in force may make a complaint against the facility to the Committee on Complaints against Private Healthcare Facilities, which is a statutory committee established under section 71 of Cap. 633 to handle complaints against licensed private healthcare facilities. The interpretation of the term “substitute decision maker” is originally provided for under section 2(5) of Cap. 633 by reference to section 3 of the Electronic Health Record Sharing System Ordinance (Cap. 625) (“**Cap. 625**”). Section 3 of Cap. 625, which specifically caters for the Electronic Health Record Sharing System (eHRSS), may impose unnecessary technical barriers on the rights of the patients to make complaints under Cap. 633. The Health Bureau proposes to amend Cap. 633 to provide for the interpretation of “substitute decision maker” in Cap. 633 that is suitable to its own context and for its purposes.

(k) Patents Ordinance (Cap. 514) and its subsidiary legislation

25. CEDB proposes amendments to the Patents Ordinance (Cap. 514) and its subsidiary legislation, namely, the Patents (Designation of Patent Offices) Notice (Cap. 514 sub. leg. A) and the Patents (General) Rules (Cap. 514 sub. leg. C). The proposed amendments are to update the English title of “國家知識產權局” from “State Intellectual Property Office” to “China National Intellectual Property Administration”.

(l) Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) and Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) (including its subsidiary legislation)

26. It is proposed to align the English equivalent of “高級人民法院” (namely, “Higher People’s Court”) appearing in the Mainland Judgments

(Reciprocal Enforcement) Ordinance (Cap. 597), the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) and the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Rules (Cap. 639 sub. leg. A) with the translation provided in the Supreme People’s Court’s Notice, 《最高人民法院關於印發〈人民法院組織機構、職務名稱、工作場所英譯文〉的通知》(法〔2021〕184號), issued in July 2021 (namely, “High People’s Court”).

(m) Other miscellaneous amendments

27. Minor and technical amendments are also to be made to various enactments to rectify incorrect cross-references and to ensure the consistency between the bilingual texts etc.

(2) Amendments with adaptation of laws elements

28. The proposed amendments in this category involve adaptation of laws elements.

29. In 2022, the Law Reform Commission (“LRC”) Secretariat spearheaded an exercise to conduct a systematic review of statutory laws of Hong Kong which consists of work mainly in three aspects, i.e. (i) adaptation of laws; (ii) consolidation of laws; and (iii) repeal of obsolete laws. The adaptation of laws refers to the process of (a) first identifying provisions or references in statute books that were in force in Hong Kong before 1 July 1997 but must, for the time being, be construed with such modifications, adaptations, limitations and exceptions as may be necessary in compliance with the Basic Law and the status of Hong Kong as a Special Administrative Region of the People’s Republic of China (“PRC”), and (b) thereafter amending them as necessary to properly reflect the policy intent of the relevant policy bureaux in the light of the resumption of the exercise of sovereignty over Hong Kong by the PRC. As far as the repeal of obsolete laws is concerned, the relevant provisions are not necessarily adaptation-related and, when ready for legislative action, are also included in this Bill.

30. Since the resumption of the exercise of sovereignty by the PRC,

responsible policy bureaux have been identifying provisions or references as requiring adaptation with relevant legislative amendments introduced from time to time by the Government. In pushing ahead with the continuing exercise to complete the adaptation of laws, the approach of “dealing with simple issues before the difficult ones” has now been adopted. With further policy input or confirmation, as the case may be, from the responsible policy bureaux in relation to the outstanding provisions or references as well as additional provisions or references more recently identified as requiring adaptation, the opportunity is now taken to propose the present batch of legislative amendments in order to effect the necessary textual amendments.

31. Most of the proposed amendments are terminological or technical in nature, having regard to the interpretative principles published by the Standing Committee of the National People’s Congress in its decision on 23 February 1997, which are included in the Hong Kong Reunification Ordinance (110 of 1997) and are incorporated as section 2A of, and Schedule 8 to, the Interpretation and General Clauses Ordinance (Cap. 1) (“**Cap. 1**”). Examples of terminological or technical amendments include –

- (i) replacing “Her Majesty the Queen, Her Heirs or Successors” by “the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws”, “Governor” by “Chief Executive”, “Governor in Council” by “Chief Executive in Council”, “the Colony” by “Hong Kong”, “立法局” by “立法會”, “行政局秘書” by “行政會議秘書”, etc.;
- (ii) adapting or repealing incompatible terminologies and references such as “the Crown”, “the Government of the United Kingdom”, “Secretary of State”, “Victoria”, “territorial waters”, etc. according to the context in which they are used; and
- (iii) repealing those pieces of obsolete subsidiary legislation that were empowered by the laws of the United Kingdom (“**UK**”), or those in relation to the laws of the UK, or used to exempt certain requirements under the laws of the UK that are no longer applicable to Hong Kong in light of Hong Kong’s status as a Special Administrative Region of the PRC.

32. Some proposed amendments are highlighted in the ensuing paragraphs.

(a) Bankruptcy Ordinance (Cap. 6) and its subsidiary legislation

33. The Financial Services and the Treasury Bureau proposes to amend the Chinese text of sections 36, 113 and 114 of the Bankruptcy Ordinance (Cap. 6) by replacing the term “立法局” with “立法會”. It is also proposed to repeal the definition of “court of appeal” (上訴法院) in rule 2 of the Bankruptcy Rules (Cap. 6 sub. leg. A) as the definition is not used in any part of the said rules and has become obsolete.

(b) Probate and Administration Ordinance (Cap. 10)

34. Section 8 of the Probate and Administration Ordinance (Cap. 10) (“**Cap. 10**”) empowers the court to summon any person named as executor in a will to prove or renounce probate and “to do such other things concerning the will as the High Court in England may do with regard to such matters”. The power with reference to the High Court in England appears to be a residual power that the court may invoke in the absence of a relevant power provided for in Cap. 10.

35. In light of the resumption of the exercise of sovereignty over Hong Kong by the PRC and the status of Hong Kong as a Special Administrative Region of the PRC since 1 July 1997, section 8, which continues to draw dependence on the practice of the High Court in England, needs to be amended. Considering the desirability of retaining some flexibility on actions that may be taken by the courts to cover unforeseen situations, and that the court will only order what it considers just in the case, the Home and Youth Affairs Bureau (“**HYAB**”) proposes to replace other things as the High Court in England may do, in section 8, with other things as the justice of the case requires. The Judiciary has expressed no in-principle objection to the proposed amendment.

36. Under section 72(2) of Cap. 10, the practice and procedure of the “Probate Registry in England” is deemed to be in force where no provision is made by probate rules and orders. The Judiciary has advised that the probate

rules and orders in Hong Kong are largely premised on those in England in around 1971, but amendments and changes made thereafter have not been necessarily followed. Furthermore, since 1997, the courts in Hong Kong have been continuing to develop their own practices, including Practice Directions 20.2 and 20.3 promulgated by the Judiciary in July 2012 and December 2013 respectively, and the “Guide to Non-Contentious Probate Practice” published in January 2013 and the subsequent Supplements issued in June 2015, August 2018 and April 2021. The Judiciary has advised that section 72(2) would no longer be necessary for the operation of the courts in Hong Kong and believes that the repeal of this section would not affect its operation in a significant way. For the time being, the Judiciary does not see that the proposed adaptation would bring about any legal vacuum that would necessitate the making of reference to the English practice. The Judiciary has also advised that there appears to be no reason why the courts in Hong Kong cannot further or continue to further their own practice and procedure on repeal of section 72(2). As such, HYAB proposes that section 72(2) be repealed.

(c) Wills (Amendment) Ordinance 1995 (56 of 1995) and Wills Ordinance (Cap. 30)

37. HYAB proposes to amend section 8 (by repealing the new Part IIA to be added to the Wills Ordinance (Cap. 30)) and repeal section 10 of the Wills (Amendment) Ordinance 1995 (56 of 1995), and to amend the Wills Ordinance (Cap. 30), as part of the adaptation of laws exercise. The Judiciary has expressed no in-principle objection to the proposed amendments.

38. The LRC Report on Law of Wills, Intestate Succession and Provision for Deceased Persons’ Families and Dependants published in 1990 recommended, among other things, that Hong Kong incorporate the Annex to the Convention providing a Uniform Law on the Form of an International Will (“**Convention**”) concluded at Washington, D.C. on 26 October 1973, in order to facilitate the granting of probate of the wills of Hong Kong inhabitants with assets in different jurisdictions, noting that the UK had become a signatory party to the Convention.

39. The Wills (Amendment) Ordinance 1995 was a legislative exercise in 1995 to amend the Wills Ordinance (Cap. 30). Sections 8 and 10 of the Wills

(Amendment) Ordinance 1995 would respectively add a new Part IIA (covering new sections 23D and 23E) and the corresponding new Schedule to the Wills Ordinance (Cap. 30), with the provisions of the Convention incorporated, when these provisions do come into operation. Since the UK had signed the Convention but had yet to ratify or bring the provisions of the Convention into force, the relevant provisions of the Wills (Amendment) Ordinance 1995 has not been brought into operation either.

40. The PRC has not acceded to the Convention. Accordingly, the Convention is not legally binding on the PRC as a matter of international law. Since the PRC is not a party to the Convention and in the light of the resumption of the exercise of sovereignty over Hong Kong by the PRC in July 1997, the original purpose for introducing the relevant provisions of the Wills (Amendment) Ordinance 1995—to maintain consistency with the UK’s practice regarding international wills—is no longer relevant or compatible with the new constitutional order, and the relevant provisions should be repealed.

(d) Surviving Spouses’ and Children’s Pensions Ordinance (Cap. 79) and Widows and Orphans Pension Ordinance (Cap. 94)

41. With regard to the Surviving Spouses’ and Children’s Pensions Ordinance (Cap. 79), the Civil Service Bureau (“CSB”) proposes the following amendments –

- (i) the existing defined meaning of “appointed day” in section 2(1), namely, “the day appointed under section 2A”, be replaced with “1 February 1993” (i.e. the actual date appointed for the purposes of Cap. 79), and section 2A, which provides that “[t]he Governor may by notice published in the Gazette appoint a day for the purposes of this Ordinance”, be repealed;
- (ii) “or such greater period as the Governor may by order under subsection (4) prescribe for the purpose of this subparagraph,” in section 3(1)(a)(i) be repealed as no order had been made under section 3(4) by the then Governor; and
- (iii) to repeal section 3(4), which provides that “[t]he Governor may by

order prescribe a period of not less than 12 months nor more than 2 years for the purpose of subsection (1)(a)(i), generally or in respect of any group of officers”. This power granted by section 3(4) to the Governor is limited to prescribing a period of not less than 12 months and up to two years following the commencement date of Cap. 79 (i.e. 1 January 1978). The power is no longer exercisable by the relevant authority today.

42. With regard to the Widows and Orphans Pension Ordinance (Cap. 94), apart from some terminological and technical amendments, CSB also proposes to add a new definition of “Crown Agents” in section 8(5) of that ordinance, and to repeal the same definition in section 1 of Schedule 9 to Cap. 1. Further, it is proposed to replace “within 6 months after a day appointed by the Governor for the purposes of this subsection” in section 15A(1)(a) with “within 6 months after 1 February 1993”, to replace “the day appointed under that subsection” in section 15A(2)(a) with “1 February 1993”, and to repeal section 15A(3).

(e) Post Office Ordinance (Cap. 98)

43. CEDB proposes to amend Cap. 98 by repealing the reference to “Her Majesty’s Postmaster General” in section 2(1) and the references to “on Her Majesty’s service” in sections 22, 31(1) and 32(1)(m). Amendments are also proposed to replace the term “Governor in Council” with “Chief Executive in Council” (in the introductory words of section 3, sections 3(r) and (s), 4(1) and (2), 4A(1), 6(5) and 21(3)), the term “Governor” with “Chief Executive” (in sections 5, 14(a), (b), (c) and (d) and 32(5)), and the term “Crown” with “Government” in section 32(5).

(f) Tramway Ordinance (Cap. 107)

44. The Transport and Logistics Bureau (“TLB”) proposes to amend section 50(2) of the Tramway Ordinance (Cap. 107) to align with the general principle laid down by Article 9 of the Basic Law that both Chinese and English may be used as official languages by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region.

(g) Immigration Ordinance (Cap. 115) and its subsidiary legislation

45. Apart from some terminological and technical amendments, in consultation with TLB, SB also proposes to replace the expression “an International Convention for the Safety of Life at Sea which has been acceded to by the United Kingdom and extended to Hong Kong” in section 37I(3)(a) of Cap. 115 with the expression “the International Convention for the Safety of Life at Sea signed in London on 1 November 1974, or any convention that replaces that Convention or any successor convention, as amended from time to time and as applicable to Hong Kong”, with a view to ensuring that the International Convention for the Safety of Life at Sea, which is updated from time to time, is being referred to in Cap. 115; and to replace the expression “acceded to by the United Kingdom and extended to Hong Kong” in section 37I(3)(b) with the expression “as applicable to Hong Kong”.

(h) Wild Animals Protection Ordinance (Cap. 170), Air Pollution Control Ordinance (Cap. 311), Waste Disposal Ordinance (Cap. 354), Water Pollution Control Ordinance (Cap. 358), Noise Control Ordinance (Cap. 400) (including their subsidiary legislation) and Electricity (Registration) Regulations (Cap. 406 sub. leg. D)

46. Apart from some terminological and technical amendments, EEB proposes to amend section 44 of the Air Pollution Control Ordinance (Cap. 311), section 36 of the Waste Disposal Ordinance (Cap. 354), section 47 of the Water Pollution Control Ordinance (Cap. 358), and section 38 of the Noise Control Ordinance (Cap. 400) by replacing “Crown” with “Government” to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the PRC for the purposes of these ordinances.

(i) Criminal Procedure Ordinance (Cap. 221)

47. Form 4 in Schedule 1 to the Criminal Procedure Ordinance (Cap. 221) initially contained a reference to the “Supreme Court, Victoria”. The first part of the reference, “Supreme Court”, was later adapted as the “High Court”. The second part of the reference, “Victoria”, is now proposed to be repealed.

(j) Misrepresentation Ordinance (Cap. 284)

48. CSO proposes to amend section 7 of the Misrepresentation Ordinance (Cap. 284) by replacing the term “Crown” with “Government” to bring it into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the PRC for the purpose of this ordinance.

(k) Various pieces of subsidiary legislation under Merchant Shipping (Safety) Ordinance (Cap. 369) and Merchant Shipping (Registration) Ordinance (Cap. 415)

49. Apart from some terminological or technical amendments, TLB also proposes the following amendments –

- (i) the definition of “commencement date” under section 2(1) of the Merchant Shipping (Registration) Ordinance (Cap. 415) refers to the date appointed by the “Governor” for the commencement of the ordinance, which was an act that preceded 1 July 1997. It is not suitable to replace it with the “Chief Executive” as there was no “Chief Executive” on that relevant date. Therefore, it is proposed to amend the definition of “commencement date” in section 2(1) to mean the actual date, namely, 3 December 1990;
- (ii) it is proposed to replace the reference to “Secretary of State” with “Director” under regulation 31(2)(b) of the Merchant Shipping (Safety) (Fire Protection) (Ships Built Before 25 May 1980) Regulations (Cap. 369 sub. leg. W) as the power concerned under that regulation is always exercised by the Director of Marine. The amendment could reflect the reality and align with the existing operational arrangement;
- (iii) it is proposed to replace “China” with “the Mainland” in regulation 40(2) of the Merchant Shipping (Minimum Passenger Space) Regulations (Cap. 369 sub. leg. E), which contains the phrase “Hong Kong, the coast of China, Taiwan”, to avoid any implication of sovereignty;

- (iv) in the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built Before 1 September 1984) Regulations (Cap. 369 sub. leg. R), the Merchant Shipping (Safety) (Cargo Ship Construction and Survey) (Ships Built On or After 1 September 1984) Regulations (Cap. 369 sub. leg. S), and the Merchant Shipping (Safety) (Grain) Regulations (Cap. 369 sub. leg. AA), the meaning of “surveyor” is defined to include “a marine surveyor of the United Kingdom Department of Transport”. As the surveying job is no longer carried out by a surveyor of the United Kingdom Department of Transport after the resumption of the exercise of sovereignty by the PRC, it is proposed to delete the reference to “a marine surveyor of the United Kingdom Department of Transport”; and
- (v) the Examination of Hull, Ship-side Fittings and Boilers (Exemption) (Consolidation) Notice (Cap. 369 sub. leg. I), the Corridor Bulkheads Serving Accommodation Spaces and Control Stations (Cap. 369 sub. leg. J), and the Merchant Shipping (Safety) Ordinance (Exemption) Notice (Cap. 369 sub. leg. P) are pieces of obsolete subsidiary legislation since the exemptions of certain merchant shipping requirements were empowered by the laws of the UK, which are no longer applicable now. The existing provisions of the Merchant Shipping (Safety) Ordinance (Cap. 369) already empower the Director of Marine to grant exemptions from any requirements of that ordinance and any regulations made under that ordinance. Therefore, these pieces of subsidiary legislation are no longer required and are proposed to be repealed.
- (l) Kowloon-Canton Railway Corporation Ordinance (Cap. 372), Road Traffic Ordinance (Cap. 374), Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474), Tsing Ma Control Area Ordinance (Cap. 498) and Discovery Bay Tunnel Link Ordinance (Cap. 520)**

50. Apart from some terminological and technical amendments to the Kowloon-Canton Railway Corporation Ordinance (Cap. 372) (“**Cap. 372**”), the Road Traffic Ordinance (Cap. 374) (“**Cap. 374**”), the Tai Lam Tunnel and Yuen Long Approach Road Ordinance (Cap. 474), the Tsing Ma Control Area

Ordinance (Cap. 498), and the Discovery Bay Tunnel Link Ordinance (Cap. 520), amendments are also proposed in relation to the definition of “appointed day” in section 2(1) of Cap. 372. That definition refers to the day appointed by “the Governor” under section 7(1). The actual day appointed fell on 1 February 1983, which preceded the resumption of the exercise of sovereignty by the PRC. TLB therefore proposes to define “appointed day” in section 2(1) to mean “1 February 1983”. TLB further proposes to repeal the reference to the appointment of a day by “the Governor” in section 7(1) and replace it with “the appointed day”.

(m) Airport Authority Ordinance (Cap. 483) and its subsidiary legislation

51. Section 8(b) of the Airport Authority Ordinance (Cap. 483), among other things, excludes the making of air service agreements or arrangements (“ASAs”) with other governments, etc. from the functions and powers of the Airport Authority. The scope of the existing limitation is that the Airport Authority may not make any ASAs with “the government of any country or territory outside Hong Kong”, “a department or branch of any such government”, “any government agency or undertaking in such a country or territory” or “any other person”. In accordance with the Basic Law, Hong Kong has entered into separate ASAs with the Mainland, Macao and Taiwan. These three places, which are all part of the PRC, are not “any country or territory outside Hong Kong”, as both “country” and “territory” may have the implication of sovereignty. TLB proposes to adapt the phrase as “country, territory or place outside Hong Kong” to cover Mainland China and jurisdictions within the PRC.

52. The Airport Authority Bylaw (Cap. 483 sub. leg. A) (“**Cap. 483A**”) was made under sections 35 and 36 of the Airport Authority Ordinance (Cap. 483) to, among others, regulate the use and operation of the Hong Kong International Airport (“**HKIA**”). To govern the use of vehicles at HKIA, Cap. 483A makes extensive references to Cap. 374 and its subsidiary legislation, which used to carry colonial references such as “Crown land”.¹ Such colonial references in

¹ When referring to relevant clauses of Cap. 374 and its subsidiary legislation in Schedule 2 to Cap 483A, some of the colonial terms have been quoted for modification, such as in Parts II and V.

Cap. 374 and its subsidiary legislation have already been adapted as part of the amendments under the Adaptation of Laws (Crown Land) Ordinance (29 of 1998) with effect from 1 July 1997.² It follows that the relevant provisions in Schedule 2 to Cap. 483A need to be updated to reflect the present wording of the adapted subsidiary legislation of Cap. 374 for them to remain pertinent.

(n) Patents Ordinance (Cap. 514) and Trade Marks Ordinance (Cap. 559)

53. CEDB proposes to replace the term “territorial waters” in section 75(d) and (f) of the Patents Ordinance (Cap. 514) with “waters”; and replace the term “competent authorities in foreign jurisdictions” in section 1(2)(e) and (6) of Schedule 2 to the Trade Marks Ordinance (Cap. 559) with “competent authorities in non-Hong Kong jurisdictions”.

(o) Masonic Benevolence Fund Incorporation Ordinance (Cap. 1034) and Zetland Hall Trustees Incorporation Ordinance (Cap. 1055)

54. HYAB, in consultation with the Zetland Hall, the private body of which the ordinances provide for, proposes to amend section 9 of the Masonic Benevolence Fund Incorporation Ordinance (Cap. 1034) (“**Cap. 1034**”) and section 10 of the Zetland Hall Trustees Incorporation Ordinance (Cap. 1055) (“**Cap. 1055**”) by replacing “Her Majesty the Queen, Her Heirs or Successors” with “the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws” in respect of the saving provisions of these ordinances.

55. Since section 9 of Cap. 1034 and section 10 of Cap. 1055 are the only statutory provisions that still have to rely on the construction principle under section 21 of Schedule 8 to Cap. 1, section 21 is proposed to be repealed as a consequential amendment to the adaptation of the said provisions.

² For instance, “Crown land” and “unleased Crown land” have been replaced with “Government land” and “unleased Government land”.

Way Forward

56. Members are invited to take note of the proposals in this paper. Comments or requests for information may be directed at Miss Jenny HUI, Senior Government Counsel (tel: 3918 4021, email: cpad@doj.gov.hk) or Mr Aaron CHAN, Government Counsel (tel: 3918 4587; e-mail: cpad@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.

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