

# HOW LEGISLATION IS MADE IN HONG KONG

## A DRAFTER'S VIEW OF THE PROCESS

LAW DRAFTING DIVISION  
DEPARTMENT OF JUSTICE





## Foreword by the Secretary for Justice

An understanding of the process of making legislation is important in a society in which legislation is a primary source of the law that governs it. This publication gives an overview of how the process of making legislation in Hong Kong operates and explains some key features of that complex process.

It has been prepared by the Law Drafting Division of the Department of Justice, which is responsible for drafting all legislation proposed by the Government. Within the Department, that Division is in a unique position to explain the process of making legislation because of the vital part legislative drafting plays in that process.

This publication is a rewrite with updated information and statistics of *Legislative Drafting in Hong Kong: Crystallization in Definitive Form*, published by the Department of Justice in 1999, and as a 2nd edition in 2001. It is intended to be a companion to the recently published *Drafting Legislation in Hong Kong—A Guide to Styles and Practices*, which explains the styles and practices used by the Law Drafting Division in drafting legislation. This complements it by providing a general description of the nature of legislative drafting and the process by which a legislative proposal is transformed into law. It takes the reader through the various stages that a policy proposal undergoes before it ends up as a law and takes its place among all the other laws of Hong Kong.

This publication should be of interest to a wide range of readers who wish to have a better understanding of how legislation is made in Hong Kong.

A handwritten signature in black ink, reading "Wong Yan Lung" in a cursive style, followed by a horizontal line.

Wong Yan Lung SC  
Secretary for Justice  
June 2012

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# Contents

<b>1</b>	<b>Legislative Drafting</b>	<b>5</b>
<b>2</b>	<b>The Drafting Process</b>	<b>9</b>
<b>3</b>	<b>The Executive Council</b>	<b>13</b>
<b>4</b>	<b>The Legislative Council</b>	<b>15</b>
<b>5</b>	<b>Completion of Process</b>	<b>18</b>
<b>6</b>	<b>Enhancing Quality and Accessibility</b>	<b>20</b>
<b>7</b>	<b>Appendices</b>	<b>25</b>
1	Organizational Chart of the Department of Justice	
2	Organizational Chart of the Law Drafting Division	
3	HKSAR General Regulations—Chapter V, Legal Matters	
4	Legislative Process—Timetable of a Bill	
5	Sample page of Loose-leaf Edition	
6	Sample page of BLIS	
7	Principal features of BLIS	



# 1

## Legislative Drafting

### What is legislative drafting?

**1.1** Legislative drafting is an integral part of the law-making process. The legislative policy must be expressed in writing before it is presented to the lawmaker. For present purposes,<sup>1</sup> legislative drafting is best described as the art of converting legislative proposals into legally sound and effective law. Although it is important that legislation is written in clear, easily understood and unambiguous language, legislative drafting is not a mere literary exercise.

**1.2** Legislation is the framework within which a society functions. The rights and obligations of individuals and organizations in a society are determined primarily by legislation.<sup>2</sup> Any proposal for new legislation (which could be for an entirely new law or an amendment to an existing law) must first be examined and analysed against existing legislation<sup>3</sup> and other laws to see how it can be implemented. Then the drafter of the proposed legislation needs to conceive a legislative scheme to give effect to the proposals. The next step is to consider how best to communicate those concepts to a diverse group of statute users.

**1.3** The above exemplifies the dual aspects of legislative drafting—the conceptual aspect, in which the drafter ascertains and perfects the concepts to be employed in the draft, and the literary aspect, in which the drafter selects the best means of expressing those concepts.

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<sup>1</sup> In contemporary discourse on the nature of legislative drafting, there is discussion whether it is an art, a science, a discipline or a combination of these.

<sup>2</sup> “There is hardly any aspect of the education, welfare, health, employment, housing, income and public conduct of the citizen that is not regulated by statute.” David R. Miers and Alan C. Page, *Legislation*, 2nd ed. (London: Sweet & Maxwell, 1990), p. ix. Although this statement is made in the context of United Kingdom legislation, it can apply to most communities.

<sup>3</sup> As at 1 June 2012, the total number of Ordinances in the laws of Hong Kong was 693 and the total number of items of subsidiary legislation was 1441.

### What is a legislative drafter?

**1.4** A legislative drafter is a lawyer who specializes in drafting legislation and is trained in the principles and technique of drafting legislation. Legislative drafting also requires other aptitudes, such as knowledge of the legislative process and, of course, language skills.

### Who makes Hong Kong legislation?

**1.5** The Legislative Council of the Hong Kong Special Administrative Region (**LegCo**) is the legislature of the Region (see Article 66 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (**BL**)). The primary legislation of Hong Kong is enacted by LegCo and is known as "Ordinances".<sup>4</sup> (See Chapter 4 and also *Drafting Legislation in Hong Kong—A Guide to Styles and Practices (Guide)*,<sup>5</sup> paragraph 1.1.1.)

**1.6** The subsidiary legislation of Hong Kong is made by the Chief Executive in Council<sup>6</sup> or other authorities, to whom the law-making power in certain areas is delegated by LegCo under an Ordinance. (See Chapter 3 and also the Guide, paragraph 1.3.1.)

### Who drafts Government legislation?

**1.7** Counsel employed as legislative drafters of the Law Drafting Division of the Department of Justice of Hong Kong play a key role in the law-making process. They write the text of any legislation proposed by the Government, which the lawmaker may then make into law.

### Structure of Law Drafting Division

**1.8** The Law Drafting Division (**LDD**), headed by the Law Draftsman, is one of the 6 Divisions of the Department of Justice. In terms of numbers of staff, LDD (108) ranks 4th in size in the Department of Justice after the Prosecutions Division (467), the Civil Division (301) and the Administration and Development Division (188).<sup>7</sup>

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<sup>4</sup> For more information on LegCo (including its history, present role and functions), see "About LegCo" on the LegCo website: [www.legco.gov.hk](http://www.legco.gov.hk). For a description of "How Laws Are Made", see the "Factsheet" prepared by LegCo's Education Service Section at [www.legco.gov.hk/english/education/files/Factsheet7\\_How\\_Laws\\_are\\_made\\_Apr2012.pdf](http://www.legco.gov.hk/english/education/files/Factsheet7_How_Laws_are_made_Apr2012.pdf).

<sup>5</sup> For information on how to access the Guide, see paragraph 6.6.

<sup>6</sup> This is the Chief Executive of the Hong Kong Special Administrative Region (**Chief Executive**), acting in consultation with the Executive Council.

<sup>7</sup> These figures were correct as at 1 June 2012.



**1.9** On 1 June 2012 LDD had an establishment of 37 counsel, 1 Law Translation Officer, 17 Law Clerks, 1 Executive Officer, 18 Clerical Staff, 21 Secretarial Staff, 3 Typists and 10 Calligraphists.<sup>8</sup> In addition, LDD currently has a Legislative Editor (English text).<sup>9</sup>

### Functions of LDD

**1.10** The primary function of LDD is to provide legislative drafting services to the Government. LDD is responsible for drafting all Government legislation.<sup>10</sup>

**1.11** In the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region (*LegCo Rules*),<sup>11</sup> under Rule 51 (*notice of presentation of bills*), the notice of intention to present a non-Government Bill (i.e. a Bill presented by a LegCo Member) has to be accompanied by a certificate signed by the Law Draftsman. In terms of LegCo Rule 51(2), the certificate is issued by the Law Draftsman “, if satisfied that the bill conforms to the requirements of Rule 50 (Form of Bills) and the general form of Hong Kong legislation, ...”. For the purpose of issuing the certificate, LDD vets all non-Government Bills. There is no such formal role for the Law Draftsman with regard to non-Government subsidiary legislation. The established practice however is to send the draft subsidiary legislation to LDD for vetting.

**1.12** Counsel of LDD also advise the Government on legal issues and matters relating to draft legislation and assist the Government during the passage of legislation through the legislative process. They attend meetings of the Executive Council and meetings of LegCo committees at which legislation they have drafted is discussed.

**1.13** LDD maintains the Loose-leaf Edition of the laws of Hong Kong (see paragraphs 6.11 to 6.13) and assists in maintaining an electronic database of the laws (Bilingual Laws Information System or *BLIS*) (see paragraphs 6.14 and 6.15).

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<sup>8</sup> The organization chart at Appendix 1 shows the organizational structure of the Department of Justice in diagrammatic form and Appendix 2 shows the organizational structure of LDD counsel.

<sup>9</sup> The main task of the present Legislative Editor, who has an academic and professional background in English, is to review the English text of draft legislation from a grammar and language use perspective.

<sup>10</sup> Under Article 62(5) of the BL, one of the powers and functions of the Government of the Hong Kong Special Administrative Region is to “draft and introduce bills, motions and subordinate legislation”.

<sup>11</sup> For information on how to access the LegCo Rules, see footnote 18.

### **Training of counsel**

**1.14** LDD places a high priority on the training and professional development of its counsel. The training can take many forms—structured training by participation in legislative drafting courses and internal workshops and seminars and on the job training by drafting under the guidance of senior, more experienced colleagues. In addition, counsel are given opportunities to connect with legislative drafters in other jurisdictions and to keep abreast of drafting trends, by attachments to overseas drafting offices and attending international legislative drafting conferences.

# 2

## The Drafting Process

### Instructions to draft

**2.1** All Government legislation is drafted on the basis of Drafting Instructions issued by the relevant policy Bureau. If the legislation is initiated by the Department of Justice, the instructions are prepared by the Department itself. To prepare legislation to implement a legislative proposal, a clear and detailed statement of what the legislation is intended to achieve in policy terms is necessary. The specific requirements relating to the preparation of Drafting Instructions are set out in the Government's "General Regulations". A copy of the relevant chapter (together with its appendix and check list) is attached as Appendix 3.

### Committee on Legislative Priorities

**2.2** A proposal for primary legislation is presented to LegCo as a Bill. The drafting work on a Bill proposed by the Government usually begins only after the Bill has been allocated a place in the Government's legislative programme (i.e. a legislative slot) by the Committee on Legislative Priorities.

**2.3** The Committee consists of the Chief Secretary for Administration, the Financial Secretary, the Secretary for Justice and the Law Draftsman and is serviced by the Director of Administration. The function of the Committee is to plan and manage the Government's legislative programme for each LegCo session. The Committee decides which Bills will be introduced in each session and also nominates the day (the legislative slot) for the introduction of the Bill.<sup>12</sup> The Law Draftsman's role in the Committee is to advise on how long the drafting of each Bill is likely to take.

**2.4** After the Committee has settled the legislative programme for a session, the policy team and the drafter assigned to the Bill work together to have the Bill completed in time for introduction on the allocated date. The Law Draftsman monitors the overall progress of the drafting of the Bill and issues a monthly report to each Bureau showing the current position of each item of legislation being drafted.

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<sup>12</sup> This would be the date for the first reading of the Bill (see LegCo Rule 53 (*first reading of bills*) and paragraphs 4.2 and 4.3).

### Legislative timetable for subsidiary legislation

**2.5** The usual practice with regard to Government subsidiary legislation is for the policy Bureau to consult the Law Draftsman on the feasibility of the proposed legislative timetable (i.e. basically the proposed dates for the Gazettal of the subsidiary legislation and its tabling in LegCo) at the time of or before issuing the Drafting Instructions.

### How is legislation drafted?

**2.6** The most important part of preparing a legislative item is the drafting itself. If it is a short item, the internal working practice is to assign the drafting of both the English and Chinese texts to the same drafter. With substantial items, the drafting of the two texts is usually undertaken by 2 drafters, or, if the urgency or the volume of work so requires, by a team. Before drafting proper begins the drafter will spend time to—

- thoroughly understand the proposals;
- become familiar with any law that has relevance to or could affect the proposed legislation, with particular attention to the Hong Kong Bill of Rights Ordinance (Cap. 383) and the BL;
- evaluate the proposals to ensure that they are conceptually sound and that there are no legal obstacles to their implementation;
- consider how to integrate the proposals with existing provisions and laws.

**2.7** The above applies to all except the simplest of legislative proposals. Often a preliminary draft may need to be prepared to identify any conceptual difficulties, legal issues and areas to which further thought may need to be given. Different and alternative means may have to be considered and weighed before deciding on the best drafting solution.

**2.8** Naturally, drafters work hard to complete a drafting assignment within the estimated timelines. However, the time required for the drafting process should not be underestimated as transforming legislative proposals into draft legislation is often a complex process. For example, it can throw up legal issues and new policy questions, which would need to be resolved before the exercise can progress. A challenge that the drafter often has to face is balancing urgency with quality and precision, working within a limited time frame.

**2.9** After the initial stages are completed, the drafting process normally consists of the drafter producing a series of drafts for discussion and consultation, in response to comments. This collaborative process of drafting, consideration and discussion of drafts (at drafting conferences and by correspondence) and re-drafting continues until the optimum draft is reached and the parties are satisfied that the draft legislation will effectively implement the policy.

**2.10** Drafts are checked and cleared internally at various stages before the final draft or the “blue”<sup>13</sup> is released. The Law Clerks of LDD check the format of the draft legislation at different stages of the drafting process. The final clearance will be by the Law Draftsman or a senior LDD counsel assigned to the item. If the draft legislation has to be submitted to the Executive Council (paragraph 3.1), the final clearance is on behalf of the Secretary for Justice (paragraph 3.2).

### **Time taken to complete the drafting varies**

**2.11** The time it takes to finish drafting an item of legislation depends on its length and conceptual complexity and the progress of the discussions and consultation on the draft legislation.<sup>14</sup> LDD has an internal system of initially classifying legislative items as minor, average or major, based on the estimated length and complexity of the item. However, experience and recent statistics have shown that the time taken for completion cannot always be correlated with that classification. The drafting time can be significantly affected by factors such as delays during the consultation process and unforeseen questions arising during the drafting process that need to be settled before drafting can continue. Of course, there are also occasions when the available drafting time becomes greatly reduced due to policy considerations. Then LDD may need to re-prioritize work within the Division or allocate extra resources to the item to accommodate the timetable.

### **How much legislation is drafted each year?**

**2.12** On average, LDD drafts about 25 Bills a year. LDD also drafts about 150 items of subsidiary legislation a year. Practically all of this draft legislation becomes law.

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<sup>13</sup> The “blue” is the name by which the final version of draft legislation is known within LDD, a name derived from the colour of the paper (blue) on which the final draft is traditionally printed.

<sup>14</sup> Often consultation can extend outside the Government. In some cases the Government may decide to publish a “White Bill” for consultation (to invite public views on the contents), before finalizing the policy.

### Formal steps for making legislation

**2.13** After the drafting is completed, that is, after the final agreed draft or “blue” is issued, the draft must go through the formal process of becoming law. For Government Bills, and subsidiary legislation to be made by the Chief Executive in Council, the first step is to submit the draft legislation to the Executive Council (**ExCo**).

**2.14** It is very common for subsidiary legislation making powers to be delegated under an Ordinance to an authority other than the Chief Executive in Council. Depending on the purpose of the legislation, the delegate could be a Government official, a statutory authority or a regulatory body, among others. For Government subsidiary legislation (i.e. subsidiary legislation to be made by a Government official) after the drafting is completed and the final draft agreed, the “blue” is sent to that official for making and other follow-up action. Submission to ExCo is not required. If it is subsidiary legislation made by a non-Government entity, as explained in paragraph 1.11, LDD has only a vetting role. The “blue” however is prepared by LDD.

# 3

## The Executive Council

### Submission to the Executive Council

**3.1** The Executive Council (**ExCo**) is an organ “for assisting the Chief Executive in policy-making” (see Article 54 of the BL). ExCo is appointed by the Chief Executive, who presides at ExCo meetings. All Government Bills are submitted to ExCo for approval for introduction into LegCo, and for that purpose, the Bill is submitted with a Memorandum (**ExCo Memo**). Subsidiary legislation to be made by the Chief Executive in Council is also submitted to ExCo with a Memorandum. (See Articles 55 and 56 of the BL.)

**3.2** In both cases, the ExCo Memo will explain the objects of the legislation and the situation or problem it is designed to deal with. The ExCo Memo also sets out the arguments for and against the legislative proposal. An ExCo Memo that relates to a legislative item is required to be cleared, together with the draft legislation, by the Secretary for Justice or the Law Draftsman on behalf of the Secretary for Justice, before submission to ExCo.

**3.3** If it is a Bill, the Chief Executive, in consultation with ExCo, can decide to approve it for introduction into LegCo or to reject it. With subsidiary legislation, the decision can be to make it or reject it.

**3.4** ExCo meets about 40 times a year, on Tuesday mornings. When an item of legislation is to be considered, the drafter of the legislation attends the meeting, together with the Government officials representing the instructing Bureau, to answer ExCo Members’ questions relating to the draft legislation. On average 2 counsel from LDD attend ExCo meetings each week.

### Publication of Bills and subsidiary legislation

**3.5** When a Bill is approved for introduction into LegCo, a Notice of intention to present the Bill is sent to the Clerk to the Legislative Council, who arranges for publication of the Bill in the Government of the Hong Kong Special

Administrative Region Gazette<sup>15</sup> (**Gazette**), usually on the Friday of the following week. LDD plays a role in connection with publication by checking proofs to ensure that the correct text is published. After it is made by the Chief Executive in Council, an item of subsidiary legislation is published in the Gazette, again usually on the Friday of the following week.<sup>16</sup>

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<sup>15</sup> LegCo Rules 51 (*notice of presentation of bills*) and 52 (*presentation and publication of bills*).

<sup>16</sup> An item of subsidiary legislation made by a person or authority other than the Chief Executive in Council is also required to be published in the Gazette.



# 4

## The Legislative Council

### Legislature of Hong Kong

**4.1** As stated in paragraph 1.5, LegCo is the legislature of Hong Kong and enacts all primary legislation.<sup>17</sup> It also has a supervisory role over subsidiary legislation.

### Primary legislation—legislative process

**4.2** The LegCo Rules<sup>18</sup> set out the procedural rules governing the passage of a Bill through LegCo. The Bill has to go through the procedural stages commonly known as the “three readings”, the first reading, the second reading and the third reading, in LegCo, before it can become legislation.<sup>19</sup>

**4.3** At the first reading, the Clerk to the Legislative Council reads aloud the short title of the Bill<sup>20</sup> at a LegCo meeting. The Bill is then taken to have been read the first time. No debate is allowed on the first reading and the Bill is set down for the second reading (LegCo Rule 53 (*first reading of bills*)). The second reading begins when the person in charge of the Bill has moved that the Bill be read a second time and makes a speech explaining the merits and principles of the Bill.<sup>21</sup> After the second reading has taken place, the debate in LegCo is adjourned (unless the Council orders otherwise), and the Bill is referred to the House Committee (LegCo Rule 54(4) (*second reading*)).

**4.4** The House Committee decides whether to allocate the Bill to a Bills Committee for consideration (LegCo Rule 75(4) (*House Committee*)). In the great

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<sup>17</sup> Under Article 73 of the BL, one of LegCo’s functions and powers is to “... enact, amend or repeal laws in accordance with the provisions of this Law [BL] and legal procedures;”.

<sup>18</sup> The LegCo Rules can be accessed at [www.legco.gov.hk/general/english/procedur/content/rop.htm](http://www.legco.gov.hk/general/english/procedur/content/rop.htm).

<sup>19</sup> For more information, see “How does a Bill become an Ordinance?” under “How the LegCo Works” on the LegCo website: [www.legco.gov.hk](http://www.legco.gov.hk).

<sup>20</sup> LegCo Rule 50(2) (*form of bills*) requires that a Bill should be given a short title—the short title gives the Bill its name.

<sup>21</sup> The person in charge of the Bill would be a designated public officer (if it is a Government Bill) or a LegCo Member (if it is a non-Government Bill).

majority of cases, the Bill is allocated to a Bills Committee, which carries out the detailed examination of the Bill (LegCo Rule 76 (*Bills Committees*)). The drafter of the Bill attends the meetings of the Bills Committee to advise on and answer questions relating to drafting.<sup>22</sup>

**4.5** All the amendments to a Bill that the Government proposes or agrees to are drafted by the drafter of the Bill. The Law Clerks of LDD review the form of any amendments proposed by Members of the Legislative Council that are not being agreed to by the Government. In 2011, LDD drafted or reviewed the form of 226 pages of Committee Stage Amendments in English and 201 pages in Chinese.

**4.6** After the debate on the second reading is resumed under LegCo Rule 54(5), the Council moves into “committee stage”. This is a committee of the whole Council. At this stage of the process the details of the Bill are considered and amendments are moved and voted on. Once the committee stage has been completed, the Council is resumed, and a Member reports the Bill to the Council stating whether the Bill has been amended (LegCo Rule 58 (*procedure in committee of the whole Council on a bill*)). When the Bill is reported to the Council, it is set down for the third reading (LegCo Rule 59 (*procedure on reporting bill from committee of the whole Council*)). The third reading takes place on a motion that the Bill be read a third time (LegCo Rule 63 (*third reading*)). This is the stage at which the Bill is passed by LegCo.

#### Publication of primary legislation

**4.7** After a Bill is passed by LegCo and signed by the Chief Executive (LegCo Rule 65 (*presentation of bill for signature by Chief Executive*)), the Director of Administration arranges for it to be published in the Gazette as an Ordinance. Again, LDD checks the Gazette proofs to ensure that the correct text is published.

#### Scrutiny of subsidiary legislation

**4.8** LegCo has a supervisory role over legislation the making of which it has delegated to another person or body. LegCo’s powers over subsidiary legislation are contained in sections 34 (*placing of subsidiary legislation before Legislative Council*) and 35 (*approval of Legislative Council to subsidiary legislation*) of the Interpretation and General Clauses Ordinance (Cap. 1). Section 34 of that Ordinance requires subsidiary legislation to be laid on the table of the Legislative Council.<sup>23</sup>

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<sup>22</sup> For information on inviting public views on a Bill that is allocated to a Bills Committee, see “Handbook for Chairmen of Bills Committees” available on the LegCo website: [www.legco.gov.hk](http://www.legco.gov.hk).

<sup>23</sup> The procedure by which LegCo exercises the powers under section 34 is commonly known as “negative vetting” and the procedure by which it exercises the powers under section 35 is commonly known as “positive vetting”.

Under LegCo Rule 75(10) and (12) (*House Committee*), the House Committee may appoint a subcommittee to consider the tabled subsidiary legislation. If a subcommittee is appointed to scrutinize an item of subsidiary legislation drafted by LDD, the drafter concerned usually attends its meetings to answer questions related to drafting. He or she also drafts any resolution<sup>24</sup> proposed or agreed to by the Government. The Law Clerks of LDD review the form of any resolution proposed by Members of the Legislative Council that is not being agreed to by the Government.

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<sup>24</sup> Under sections 34 and 35 of the Interpretation and General Clauses Ordinance (Cap. 1), any amendments under those sections are made by resolutions passed by LegCo.

# 5

## Completion of Process

### Legal Reports

**5.1** After an Ordinance is published in the Gazette, the Law Draftsman prepares a Legal Report explaining the object of the Ordinance and the problem or situation it is designed to deal with. This Report, together with a copy of the Ordinance, is sent to the Standing Committee of the National People's Congress in Beijing.

**5.2** Under Article 17 of the BL, the Standing Committee may, in certain circumstances, return laws enacted by the Hong Kong legislature. It may return any laws it considers to be not in conformity with the provisions of the BL regarding affairs within the responsibility of the Central Authorities or regarding the relationship between the Central Authorities and Hong Kong. If a law is returned under Article 17, it becomes invalid. No law has been returned by the Standing Committee as at 1 June 2012.

### Commencement of legislation

**5.3** Legislation comes into operation, in the absence of a provision for it to come into operation on another day, on the date of its publication in the Gazette. Frequently legislation is expressed to come into operation "*on a day to be appointed by [the appointing authority] by notice published in the Gazette*". For many Ordinances and Government subsidiary legislation, the appointing authority would normally be a Government official. Although all such notices (usually referred to as commencement notices) are published in the Gazette, it is sometimes quite difficult, where commencement is deferred in this way, to discover whether or not a particular item of legislation is in operation. LDD has therefore published a guide ("Is it in Operation?") to help in this regard. "Is it in Operation?" can be accessed under "Other Information about Legislation of Hong Kong" at [www.legislation.gov.hk](http://www.legislation.gov.hk).

### Time taken for the legislative process for a Bill

**5.4** The table at Appendix 4 shows the length of time taken for each stage in the legislative process for a Bill from the completion of drafting up to the first reading. The average time taken for the passage of a Bill through LegCo from the first reading (when it is introduced) to the conclusion of the third reading (when it is passed) is a little over 6 months. Usually, after the Bill is passed, the Ordinance will be published in the Gazette on the Friday of the following week. Occasionally an Ordinance is published in the Gazette on the Friday of the same week as the Bill is passed. Of course, as noted in paragraph 4.7, before publication in the Gazette, a Bill passed by LegCo is signed by the Chief Executive (LegCo Rule 65 (*presentation of bill for signature by Chief Executive*)). Before it is signed, the Secretary for Justice advises the Chief Executive—by a “Signature and Promulgation Certificate”—that the Secretary is of the opinion that the Chief Executive may sign the Bill under Article 48(3) of the BL.

# 6

## Enhancing Quality and Accessibility

### Initiatives to enhance end product

**6.1** This Chapter describes some measures initiated by LDD or in which LDD has a participatory role, which are designed to enhance the quality of and accessibility<sup>25</sup> to the end product of the law-making process.

### Plain language and gender-neutral language

**6.2** It is LDD's policy to draft laws in plain language. The goal of plain language drafting is to make the law as simple and clear as possible without taking away from precision or substance.

**6.3** In late 2010, LDD officially adopted a policy of drafting in gender-neutral language. All new and amending legislation is now drafted in gender-neutral language. In addition to considerations such as gender equality, societal expectations and enhanced intelligibility, LDD had in view the gender-mainstreaming policies endorsed by the Government, when implementing this policy.<sup>26</sup>

### Guide to drafting styles and practices

**6.4** In 2012 the Department of Justice published a guide to the styles and practices used by counsel of LDD in drafting legislation *Drafting Legislation in Hong Kong—A Guide to Styles and Practices (Guide)*. Compiled by LDD, the Guide is intended to facilitate a clearer understanding of the law by statute users.

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<sup>25</sup> In *The Rule of Law*, Tom Bingham (the late Lord Bingham of Cornhill, formerly the Lord Chief Justice of England and Wales and Senior Law Lord), identifies accessibility of the law as one of the principles that capture the essence of the concept of rule of law. In the author's words "The Law must be accessible and so far as possible intelligible, clear and predictable." Tom Bingham, *The Rule of Law* (London: Penguin Books, 2011), p. 37.

<sup>26</sup> In the Gender Mainstreaming Checklist for Legislation, Public Policies and Programmes recommended by the Women's Commission in its 2006 Report (Gender Mainstreaming—Hong Kong Experience), item 27 is "Is gender-neutral/sensitive language used throughout the legislation/public policy/programmes/press releases or any related official document?"

**6.5** The styles and practices recommended in the Guide are designed to achieve LDD's policy of plain language drafting and gender-neutral drafting and to produce easy-to-read legislation. Chapters 9 and 10 in particular describe many techniques for drafting in a plain, contemporary and gender-neutral style.

**6.6** The Guide aims to promote uniformity in drafting practices, among drafters of both Government and non-Government legislation in Hong Kong. The use of uniform styles and consistent language greatly enhances comprehensibility. The Guide also assists the Law Draftsman in the role of keeper of the Statute Book,<sup>27</sup> particularly in the task of maintaining the integrity of the Statute Book. The Guide is available on the Department of Justice website under "Publications" at [www.doj.gov.hk](http://www.doj.gov.hk) and under "Drafting Legislation in Hong Kong" on BLIS at [www.legislation.gov.hk](http://www.legislation.gov.hk).

### Bilingualism

**6.7** Up until the late 1980s all legislation in Hong Kong was enacted in English only. After the signing of the Joint Declaration<sup>28</sup> in 1984, the Royal Instructions<sup>29</sup> were amended in August 1986 to enable laws to be enacted in Chinese. In March 1987 the Official Languages Ordinance (Cap. 5) was amended to require all new Ordinances to be enacted in English and Chinese. This was in accordance with the Government policy of providing a bilingual legal system for Hong Kong. The 1987 amendment to the Official Languages Ordinance (Cap. 5) also provided a mechanism for publishing authentic texts in Chinese of Ordinances enacted in English only. Following that amendment, the Government launched a programme (the Bilingual Laws Programme) to produce Chinese texts of laws that had been enacted in English only. That programme was completed shortly before 1 July 1997 and the Chinese texts of 494 Ordinances were prepared and promulgated.

**6.8** Under section 10B(1) of the Interpretation and General Clauses Ordinance (Cap. 1) (*construction of Ordinances in both official languages*), both the English and the Chinese texts are authentic and are presumed to have the same meaning. If a comparison of the texts discloses a difference of meaning that cannot be resolved by the rules of statutory interpretation ordinarily applicable, the meaning that best reconciles the texts, having regard to the object and purposes of the Ordinance, is required to be adopted (see section 10B(3) of the Interpretation and

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<sup>27</sup> In Hong Kong, by convention, the Law Draftsman is the "keeper of the Statute Book".

<sup>28</sup> Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong, signed on 19 December 1984.

<sup>29</sup> Hong Kong Royal Instructions 1917 to 1993 (Nos. 1 and 2) (Formal Instructions, issued under the Royal Sign Manual and Signet, to the Governor of Hong Kong).

General Clauses Ordinance (Cap. 1)). LDD has prepared an article on section 10B discussing how alleged differences in meaning may be resolved. This article is available under “Other Information about Legislation of Hong Kong” at [www.legislation.gov.hk](http://www.legislation.gov.hk).

### Bilingual Legal Glossaries

**6.9** In order to promote bilingualism in our legal system, in 1995, LDD published its first English-Chinese Glossary of Legal Terms. This Glossary contains about 4 800 terms extracted from the bilingual legislative texts. It has increased dramatically in size since then and the latest edition (4<sup>th</sup> edition) published in 2004 contains over 34 000 entries. In response to calls for a Chinese-English glossary, LDD also published, in December 1999, a Chinese-English Glossary of Legal Terms that contains around 11 500 entries. Further editions of these Glossaries will be issued as and when required.

**6.10** The Glossaries serve as handy guides to terms used in Hong Kong's bilingual legislation. To facilitate public access, they have also been made available on BLIS at [www.legislation.gov.hk](http://www.legislation.gov.hk) and on the website of the Department of Justice at [www.doj.gov.hk](http://www.doj.gov.hk).

### The Loose-leaf Edition

**6.11** Legislation is published in the Gazette in chronological order as it is promulgated or made. When so published, it is “deemed to be an authentic copy ...”<sup>30</sup>. Legislation is also published in a consolidated form (***Loose-leaf Edition***) under the Laws (Loose-leaf Publication) Ordinance 1990 (***the 1990 Ordinance***). Under section 3 of the 1990 Ordinance (*status of loose-leaf and booklets*), unless the contrary is proved, any provision appearing in a page or booklet purporting to be published under that Ordinance is deemed to be correct.

**6.12** An Ordinance enacted by LegCo is published in the Loose-leaf Edition with a chapter number (***Cap. No.***) assigned to it under the 1990 Ordinance. A Cap. No. is not assigned to an Ordinance that merely amends another Ordinance.<sup>31</sup> The Ordinances are printed in numerical order according to their Cap. Nos. Subsidiary legislation is published together with the Ordinance under which it is made. The Loose-leaf Edition is kept up to date by regular issues of new or replacement pages.

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<sup>30</sup> “(1) A copy of an Ordinance shall, if published in the Gazette, be deemed to be an authentic copy of that Ordinance as at the date of such publication.”. (Section 98(1) of the Interpretation and General Clauses Ordinance (Cap. 1) (*copies of Ordinances, etc. in Gazette*).

<sup>31</sup> Other exceptions include Appropriation Ordinances.



Amendments to Ordinances are consolidated and printed on loose-leaf pages for replacement.

**6.13** The Loose-leaf Edition is printed on A4 size pages in landscape orientation. Bilingual texts of legislation are printed in 2 columns on one page, with the bilingual texts of each provision facing each other on the page. There are now 50 volumes of the laws of Hong Kong in the Loose-leaf Edition. A sample page of an Ordinance published in the Loose-leaf Edition is attached at Appendix 5.

### **BLIS and the Web**

**6.14** Hong Kong has a searchable database of its legislation (primary and subsidiary) known as the Bilingual Laws Information System or BLIS. This database is bilingual (containing both the English and the Chinese texts of the legislation), and is regularly updated as legislation is amended or new legislation made. A sample printout of a section of an Ordinance as it appears on BLIS is attached as Appendix 6. The BLIS database is also available at [www.legislation.gov.hk](http://www.legislation.gov.hk).

**6.15** The principal features of the online BLIS are set out at Appendix 7. Some of the features are available only when using Lotus Notes as a browser. (Information about using Lotus Notes is available on the BLIS website.)

### **Proposed Verified Legislation Information System**

**6.16** As the electronic version of legislation on BLIS is made available for information only, users still need to refer to the Gazette and Loose-leaf Edition for the official versions of Hong Kong legislation. The Department of Justice has therefore been working on the development of a new verified legislation database. The Legislation Publication Ordinance (Cap. 614) (*LPO*), enacted in 2011, provides the legislative basis for the establishment of an electronic database of legislation with legal status. As at June 2012, this database project was at the tender stage.

### **Editorial Amendments and Revision Orders**

**6.17** The Secretary for Justice has certain editorial and revision powers under the 1990 Ordinance and the LPO. Under these powers, the Secretary for Justice makes editorial amendments to legislation, which are recorded in instruments known as Editorial Records, and Legislation Publication (Revision) Orders (*Revision Orders*).

**6.18** Examples of editorial amendments include correcting grammatical, clerical or typographical errors; omitting enacting, expired or spent provisions; and changing the format, layout, printing style or any other presentational aspects of an Ordinance. This is an efficient mechanism to ensure that the Statute Book is accurate, up to date and follows the prevailing legislative style and format. The making of editorial amendments is subject to the overriding principle that they must not change

the legal effect of any legislation. The amendments become effective only when the relevant Editorial Record is published in the Loose-leaf Edition.

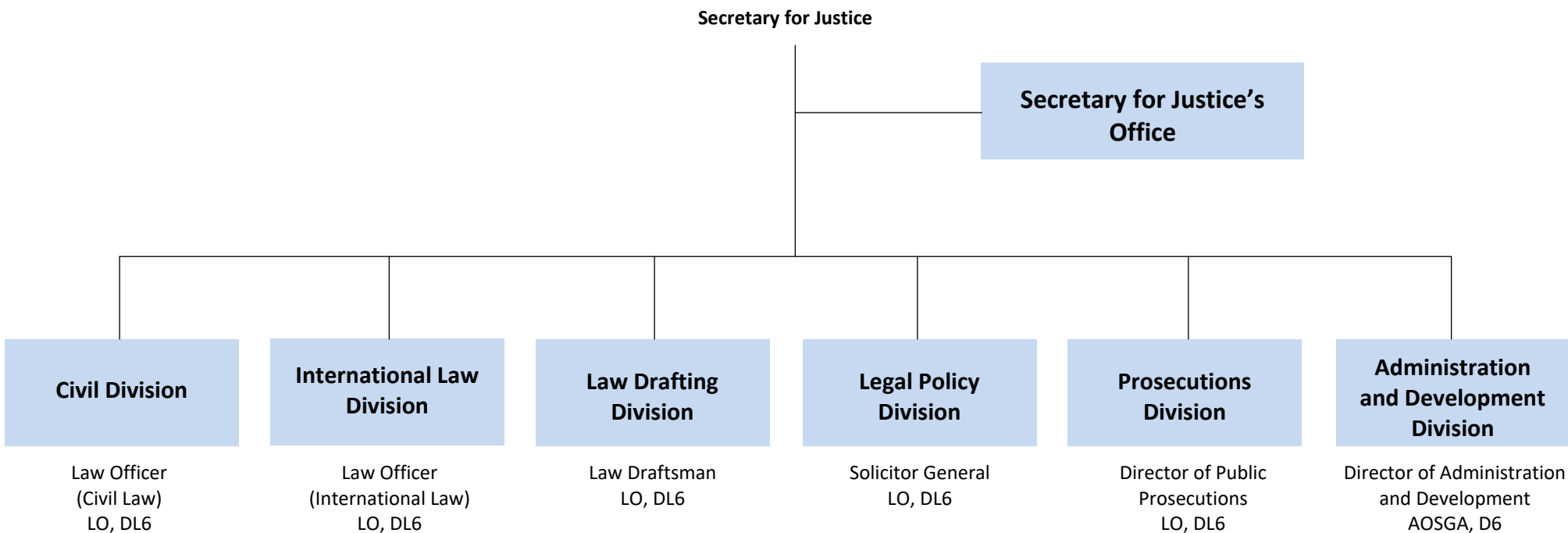
**6.19** The first Editorial Record was published on 9 February 2012. It is anticipated that they will be published about twice a year, in the Loose-leaf Edition. The Editorial Records can also be downloaded from the BLIS website for information at [www.legislation.gov.hk](http://www.legislation.gov.hk).

**6.20** The exercise of the power to make Revision Orders will assist in achieving uniformity in expression across the Statute Book. Another purpose for which a Revision Order can be used is to achieve gender-neutrality in legislation originally drafted in gender-specific language. The first Revision Order was published in the Gazette on 4 May 2012. Revision Orders are subsidiary legislation, and it is anticipated that they will be made from time to time as required.

# 7

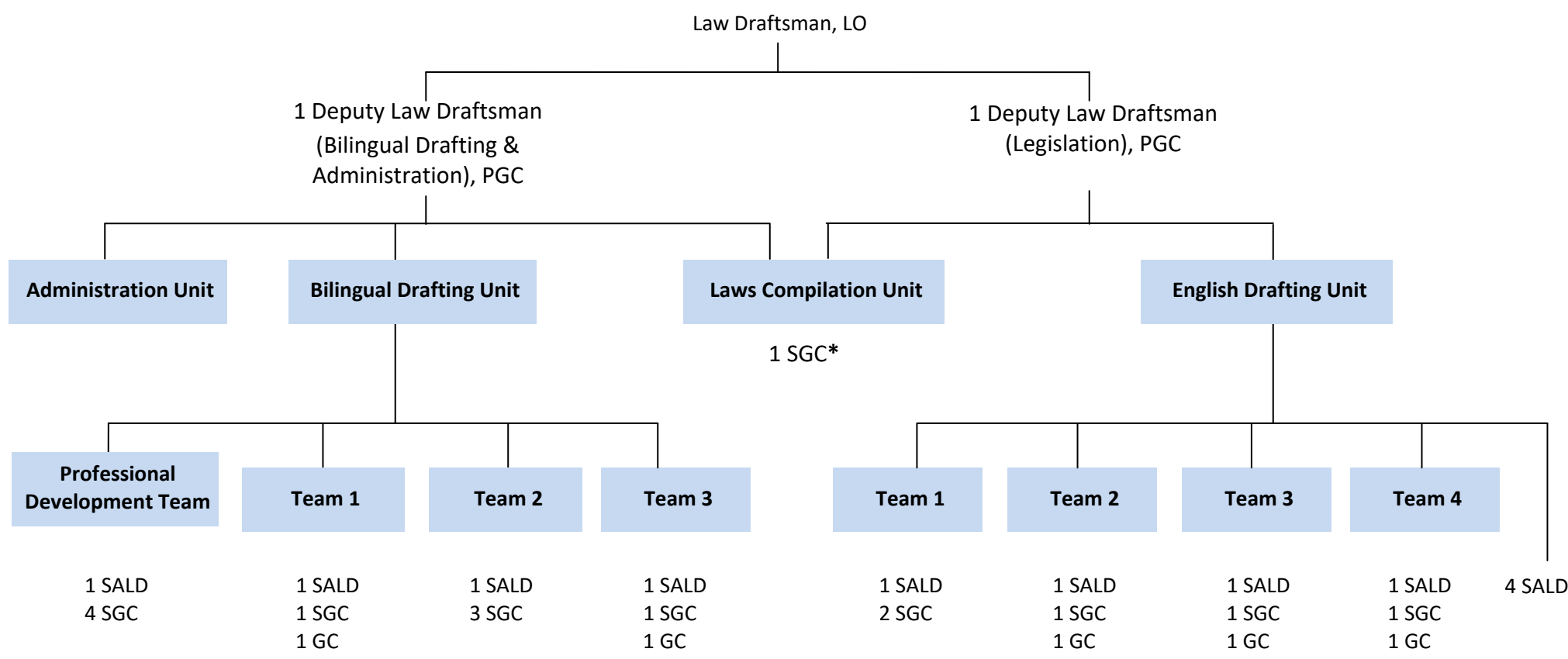
## Appendices

- 1 Organizational Chart of the Department of Justice
- 2 Organizational Chart of the Law Drafting Division
- 3 HKSAR General Regulations—Chapter V, Legal Matters
- 4 Legislative Process—Timetable of a Bill
- 5 Sample page of Loose-leaf Edition
- 6 Sample page of BLIS
- 7 Principal features of BLIS



Key: LO = Law Officer  
 AOSGA = Administrative Officer Staff Grade A

(as at 1 June 2012)



\* Also works in Team 3, Bilingual Drafting Unit

- Key:
- LO = Law Officer
  - PGC = Principal Government Counsel
  - SALD = Senior Assistant Law Draftsman, DPGC
  - DPGC = Deputy Principal Government Counsel
  - SGC = Senior Government Counsel
  - GC = Government Counsel

(as at 1 June 2012)

## Appendix 3

### HKSAR General Regulations

#### Chapter V, Legal Matters

##### Preparation of New Legislation

450. The following regulations on the preparation of new legislation are intended to cover the generality of cases and should be read in conjunction with the guidelines on the preparation of drafting instructions set out in the Appendix to this Chapter. There will be occasions when circumstances demand a deviation from the principles and procedures outlined below, e.g. where the proposed legislation is particularly urgent.

##### Proposal for Legislation

451. When a Head of Department or any other Government agency (the originator) considers that new or amending legislation is required, he must first secure support in principle from the appropriate Director of Bureau. For this purpose, a clear statement of the proposals in general terms is required. The statement should demonstrate that:

- (a) legislation is necessary in the public interest and that other options such as voluntary agreements or non-statutory codes of practice cannot achieve the objective;
- (b) all major implications of the proposal, i.e. in policy, implementation, human rights, binding effect on the “State” or particular organs of it, treaty obligations, Basic Law, resources and public relations terms, have been considered and that Financial Services and the Treasury Bureau has been consulted if additional resources will be required;
- (c) the proposal is not inconsistent with the Basic Law;
- (d) the views of other parties affected have been considered;
- (e) consideration has been given to seeking advice from the Independent Commission Against Corruption (ICAC) in view of its responsibilities for identifying practices, procedures and policies which may be conducive to corruption, and for advising on methods for eliminating or reducing these. Also, if the proposed legislation establishes a new organization, that ICAC has been consulted as to whether it should be a Public Body under section 2 of the Prevention of Bribery Ordinance (Cap. 201) and that Director of Administration

has been consulted as to whether it should be included in Schedule 1 to The Ombudsman Ordinance (Cap. 397) and be subject to the provisions of the Ordinance;

- (f) if the proposal concerns the Hong Kong Garrison, consideration has been given to the requirement to consult the Hong Kong Garrison under Article 10 of the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region; and
- (g) if the proposal may affect the privacy of individuals in relation to personal data, consideration has been given to the Personal Data (Privacy) Ordinance (Cap. 486) and the need to consult the Privacy Commissioner for Personal Data.

### **Consultation with Law Officer (Civil Law)**

452. The statement of proposals should be sent to the Law Officer (Civil Law) so that he can advise whether the Secretary for Justice has any objections in principle and whether legislation is necessary to achieve the stated aim. His advice should cover whether primary legislation, subsidiary legislation or other options such as statutory codes of practice is more appropriate to give effect to the proposals. The statement should also be copied to all interested Departments, Policy Bureaux and other parties as necessary, and to the Law Draftsman so that he will be aware of the proposal.

### **Secretariat Approval**

453. Before giving approval in principle to a drafting proposal the Director of Bureau should:

- (a) satisfy himself, taking into account the Law Officer (Civil Law)'s advice, that the matter is one which should be dealt with by legislation, that the form of the legislation proposed is appropriate;
- (b) ensure that all interested parties within the Administration have had an opportunity to comment on the proposals and that consideration has been given to the need for consultation with concerned parties outside the Administration at that stage;
- (c) satisfy himself that consideration has been given to consulting ICAC and where advice has been offered that it has been taken into consideration;

- (d) satisfy himself that consideration has been given to the resources required to enforce the proposed legislation, and to the timing of their availability;
- (e) ensure that the proposals will be in conformity with the Basic Law including the provisions concerning human rights;
- (f) if the proposal concerns the Hong Kong Garrison, satisfy himself that steps have been or will be taken to consult the Hong Kong Garrison in accordance with Article 10 of the Law of the People's Republic of China on the Garrisoning of the Hong Kong Special Administrative Region;
- (g) if the proposal may affect the privacy of individuals in relation to personal data, satisfy himself that the question of consistency with the Personal Data (Privacy) Ordinance (Cap. 486) has been considered and, where it is considered that there is a need to consult the Privacy Commissioner for Personal Data, that such consultation has been or will be carried out;
- (h) ensure that all implications of the proposals have been identified and examined in detail in the light of (b), (c), (d), (e), (f) and (g); and
- (i) where the proposals are considered to be of major public concern or will break new ground or are likely to lead to public controversy, submit a policy document in respect of the proposals to the relevant Chief Secretary for Administration's Policy Group or (in the case of financial and economic matters) to the Financial Secretary, for the purpose of obtaining clearance to issue drafting instructions.

Policy Secretaries are personally responsible for deciding at this stage whether legislative proposals should proceed and if so, whether the proposals need the approval of the Committee on Legislative Priorities. All legislative proposals other than budget legislation and subsidiary legislation, including legislative proposals under the localisation of laws and adaptation of law programme, should be submitted to that Committee. Policy Bureaux should plan ahead the target dates for the introduction of bills into the Legislative Council and respond to the Committee's invitation for bids for Legislative slots accordingly. The legislative programme for bills in the first half (October to February) and the second half (March to July) of a legislative session is normally decided by the Committee six months ahead.



## **Preparation of Drafting Instructions**

454. When a Director of Bureau has approved proposals in principle and, where necessary, obtained clearance in accordance with paragraph (i) of GR 453 or from the Committee on Legislative Priorities, he will inform the originator and the Law Draftsman. The originator should then proceed with the compilation of formal drafting instructions. He should also nominate himself or another officer as instructing officer, with authority to amend or supplement the instructions and to liaise with the draftsman. As all legislation is now bilingual, where the instructing officer is responsible for only one of the two texts of the legislation, an officer responsible for the text in the other official language should also be appointed.

455. (1) In compiling formal instructions it will usually be necessary to seek the advice and assistance of the Law Officer (Civil Law). It may also be desirable to consult other interested departments and outside bodies. Drafting instructions should be clear and detailed enough to permit drafting to proceed with the minimum of subsequent consultation and changes.

(2) Drafting instructions may be either in ordinary narrative prose or in tabular forms depending on the nature of the instructions (The narrative form is generally preferable except for minor amendments). They should not be in the form of draft legislation unless the Law Draftsman has first given his agreement.

(3) For further guidance on drafting instructions and to ensure proper standards, see the guidelines set out in the Appendix to this Chapter, and the Check List to the Appendix.

## **Issue of Drafting Instructions**

456. (1) Instructing officers should address drafting instructions direct to the Director of Bureau for approval and, at the same time, send a copy to the Law Draftsman. Drafting instructions should not be approved by the Director of Bureau unless he is satisfied that they are comprehensive and appropriate and that all policy and practical implications have been provided for.

(2) As decided by the Committee on Legislative Priorities on 12 December 1995, Bureaux are required to pass drafting instructions to the Law Draftsman before bidding for a legislative slot to introduce a particular bill. After approval has been given by the Committee, instructing officers must confirm with the Law Draftsman that the scheduled date for the bills is accepted.

457. If the Law Draftsman is unable to start work on an item immediately, he will inform the Director of Bureau and the instructing officer with other interested parties being consulted as necessary.

### **Further Instructions**

458. Once the Law Draftsman starts work on an item, any further instructions sought by him must be supplied by the instructing officer without delay. It is generally preferable that consultation between those concerned should be by discussion rather than memorandum. Every effort should be made to keep to a minimum the number of drafts requested leading up to the final draft.

### **Presentation to Executive Council**

459. When drafting work is complete, the Law Draftsman will send the completed draft to the instructing officer who will copy it to all Departments concerned. (In appropriate cases at the request of the instructing officer, the Law Draftsman may send copies direct to the Departments.) Departments will ensure that the draft achieves the aims of the drafting instructions and will send comments either to the instructing officer or to the Law Draftsman, as appropriate. The instructing officer will also consider to which other departments, committees or outside bodies (if any) the draft should be sent before it begins the final legislative stage. Such further reference should be avoided wherever possible as it should have taken place during the compilation of drafting instructions, but there may be occasions when it is unavoidable or desirable.

460. (1) In the case of draft legislation which is required to be made or approved by the Executive Council, the Executive Council memorandum should be prepared concurrently. For guidance on this refer to the appropriate Executive Council Procedures Manual. When the Department and the Secretariat Bureau confirm their agreement with the draft legislation and the related Executive Council memorandum, the Law Draftsman will prepare the final draft of the legislation in the form in which it will be put to the Executive Council. He will then make this available to the instructing officer for transmission to the Clerk to the Executive Council as soon as the covering Executive Council memorandum has been cleared by the Secretary for Justice or by the Law Draftsman on behalf of the Secretary for Justice.

(2) Note that the Secretary for Justice requires at least 7 days for clearance of Executive Council memoranda.

### **Explanatory Memorandum or Note**

461. An Explanatory Memorandum is required by the Rules of Procedure of the Legislative Council to be attached to Bills. It should contain a description in layman's language of the contents and objects of the legislation and is written in the Law Drafting Division. In the case of subsidiary legislation, it is the practice to attach an Explanatory Note to indicate the legal effect of the subsidiary legislation. This is also written in the Law Drafting Division.

### **Monitoring Progress**

462. Policy Secretaries and Heads of Departments should personally check from time to time on progress being made on legislative items originated by them or within their area of responsibility, and take appropriate action where there appears to be undue delay. The action required may be to call a meeting to resolve some outstanding policy matter, or even a recommendation for removal from the legislative programme where substantial policy issues are unlikely to be resolved in the immediate future. Policy bureaux should continue to monitor closely the progress of legislation after its introduction into the Legislative Council, and should give consideration to withdrawing a bill under consideration by a bills committee or other relevant committee of the Legislative Council, if issues raised by the committee are unlikely to be resolved quickly.

463-474

### **Use of Maps in Legislation**

475. (1) Policy Secretaries and Heads of Departments concerned with legislation in which maps are to be used should ensure that, before drafting instructions are issued to the Law Draftsman, maps designating areas where statutory provisions are to apply or to be removed, have either been prepared by the Deputy Director/Survey & Mapping or have been approved by him. Where this has been done, a statement to that effect should be included in the drafting instructions.

(2) For the drafting of legislation which is to be brought into operation urgently, Bureaux and Departments should attempt, wherever possible, to forward drafting instructions together with the required map(s) to the Law Draftsman in ample time for any inadequacies or discrepancies in the maps to be rectified.

(3) Where practicable, a detailed description of any established and recognizable boundaries of the areas to be designated should also be provided so that the Law Draftsman may decide whether or not it should be included in the legislation in addition to a reference to a map.

476-479

### **Preparation of Drafting Instructions**

The main principles of the legislative scheme to be embodied in a particular piece of legislation should be decided in advance by the sponsoring Policy Bureau, if appropriate in consultation with the Department concerned, and expressed in the Drafting Instructions given to the Law Draftsman. It is not the draftsman's job to work out basic principles as he goes along. Instructions should be complete, and show that every aspect of the proposals concerned has been thoroughly thought through and that all likely effects have been anticipated and approved by the Director of Bureau concerned. Inadequate or ill thought out instructions can lead to a number of unsatisfactory results, including legislation that has an effect that is different from what was intended, or involves a considerable waste of time on the part of all concerned.

2. Legislation is not drafted on oral instructions except in an emergency.
3. Unless approved by the Law Draftsman, instructions must not be in the form of draft legislation.
4. Where a new substantive Bill will need to be presented to the Legislative Council in one of the official languages only under the urgency procedure set out in section 4(3) of the Official Languages Ordinance (Cap. 5), this should be made clear at the outset.
5. (1) The memorandum forwarding the instructions to the Law Draftsman should state the name and telephone number of the officer with whom the draftsman can make arrangements for any necessary discussions, and list those to whom it is proposed the draft Bill will be circulated.  
  
(2) Where the instructing officer is responsible for only one of the two texts of the legislation, the name and telephone number of the officer responsible for the text in the other official language should also be stated.
6. Drafting instructions should not be sent to the Law Draftsman unless they have the personal approval of the Head of the Department and Director of Bureau concerned.
7. Instructions, both for Bills and subsidiary legislation, should comprise two parts, a general statement and detailed instructions.

8. The general statement should be comprehensive and contain:
- (a) all relevant background material relating to the proposals to be included in the legislation, so that the draftsman can see them in perspective and context;
  - (b) a statement of the circumstances giving rise to the proposals to be included in the legislation and the nature of the problem to be dealt with;
  - (c) the principal objectives to be achieved by the legislation;
  - (d) how it is proposed to achieve those objectives and how it is expected that the legislation will operate in practice;
  - (e) any known practical or legal difficulties involved; and
  - (f) an indication of any legal advice received from the Law Officer (Civil Law).
9. A copy or paraphrase of the Departmental or other submission to the Director of Bureau seeking approval in principle may not meet these requirements.
10. The length of the general statement will depend on the nature and extent of the legislative proposals dealt with, but should be comprehensive rather than brief.
11. (1) Detailed instructions should be provided in respect of all matters to be dealt with in the proposed legislation. Where appropriate these detailed instructions should in respect of each legislative proposal included in the legislation:
- (a) deal with every aspect of the proposal and indicate every requirement which the Department or Bureau considers necessary;
  - (b) indicate any administrative provisions which are considered necessary, including the level at which the proposed statutory functions will be discharged and any need for provision to delegate such functions;
  - (c) if it appears that other Hong Kong legislation or legislation of another jurisdiction satisfactorily deals with the subject of the proposal, provide a reference to that legislation and indicate whether inquiries have found it to operate satisfactorily;

- (d) if the proposal would result in some activity being prohibited or regulated, indicate the nature (and the intended level) of the sanction proposed, i.e. whether provision should be made for criminal offences, civil penalties, forfeiture, cancellation or suspension of licences or any other sanction. The Secretary for Justice will decide the actual level to be recommended to the legislative authority;
- (e) indicate the relative gravity of offences arising under the proposals, both in relation to one another and in relation to any other offences considered relevant;
- (f) in the case of instructions for amending legislation, indicate the provisions of the principal legislation which the Department or Bureau considers should be amended;
- (g) indicate any consequential amendments;
- (h) indicate any transitional or savings provisions required (e.g. phasing in of new measures, saving of former rights, licences, etc.);
- (i) indicate whether any provisions are to have retrospective operation;
- (j) if the Department or Bureau has any decided view on either the form or position of the legislative provision, furnish particulars;
- (k) give references to any known decided cases or copies of any legal opinions available to the Department or Bureau that may affect the proposal including any opinion from the Law Officer (Civil Law);
- (l) indicate any specific regulation-making powers required;
- (m) provide copies of reports of committees, etc., or, if the reports are readily available, references to reports that deal with the proposal;
- (n) give where practicable, Chinese equivalents for technical expressions intended to be used by the draftsman;
- (o) indicate the commencement of the proposed legislation, particularly if it is to be phased in;
- (p) indicate if the rights or property of persons will be affected, and if so what provision is to be made for compensation and appeals if any

and generally for compliance with the human rights provisions of the Basic Law;

- (q) indicate whether the “State” (as defined in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1) or particular organs of it are to be bound; and
- (r) indicate if it is envisaged that the procedure under s. 4(3) of the Official Languages Ordinance will be invoked.

(2) Legislative Drafting Instructions should normally be in ordinary narrative prose. However, in appropriate cases, e.g. where a series of paragraphs have a common feature, instructions may be sent in tabular form. An example might be—

“General heading

Particular matters  
to be provided

Remarks, queries and  
explanations”

Note: Drafting Instructions should not use the phrase “consideration needs to be given” to a topic. Consideration should have been given before the instructions are issued. The term “etc.” should not be used in drafting instructions.

12. It will generally be unnecessary for Departmental files or copies of Departmental correspondence to accompany properly prepared instructions, and as far as possible this should be avoided.

13. If the proposed legislation deals with a technical subject the instructions should include sufficient material on the subject to enable the draftsman to gain an adequate understanding of the technicalities and technical terms involved.

14. If all of the provisions are not to commence at the same time, the instructions should indicate clearly the different times at which it is proposed that different provisions should commence. In providing instructions in accordance with this paragraph, Departments and Bureaux should ensure that the provisions that are to commence earlier than others are not rendered ineffective because their operation depends on the commencement of the other provisions.

15. Proposals which need to be considered for possible contravention of the Basic Law including provisions concerning human rights should be referred by the Director of Bureau to the Solicitor General as early as possible, and in any event

before instructions are given to the Law Draftsman. Examples are provisions for heavy or unusual penalties, changing the onus of proof, retrospective effect, wide discretionary powers, powers of entry, search and arrest and evidentiary provisions. Where a person or body is to be given power to make decisions affecting the rights or property of persons, consideration should be given to the question of whether there should be provision for compensation and a right of appeal and if so what body should award compensation or hear the appeal.

16. Other examples of legally contentious proposals are provisions with extraterritorial effect or which refer to international agreements. All such proposals should be referred to the Law Officer (Civil Law) for consideration of whether they are likely to be inconsistent with the Basic Law.

17. If the proposed legislation is to bind the "State" (as defined in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1) or particular organs of it, the instructions should say so, since the "State" or particular organs of it are only bound if express provision is made to that effect or the application of the legislation to the "State" or particular organs of it arises by necessary implication. Bureaux and departments should inform the Constitutional Affairs Bureau, Security Bureau, Department of Justice and the Administration Wing of the Chief Secretary for Administration's Office of the binding effect of the proposed legislation.

18. Instructions should not be overloaded with proposals for legislative provisions that can be dealt with administratively. Purely informative provisions with no legal effect should be avoided.

19. After drafting instructions have been provided to the Law Draftsman, the instructing officer should be readily available and arrange promptly any conferences required by the draftsman.

20. Departmental and Bureau officers attending drafting conferences should have the detailed knowledge, ability and authority to make decisions on most of the questions that inevitably arise in drafting. If their decisions are to be reviewed by superior officers, drafting can be greatly delayed by the draftsman having to await confirmation of tentative decisions. An officer attending a conference on proposed amending legislation should have a detailed knowledge of the provisions and operation of the principal legislation to be amended.

21. Requests for the draftsman to include in a draft additional provisions which were not the subject of original instructions should be avoided if at all possible. If additional provisions are requested after the draftsman has devised the legislative scheme appropriate for his original instructions and has started drafting, work done by the draftsman can be rendered useless by instructions to include additional



provisions that do not fit in with that legislative scheme. Most additional provisions can be made the subject of subsequent legislation. Additional provisions will not be included in draft legislation without the Director of Bureau's prior approval.

22. On completion, the first draft will be sent by the draftsman to the instructing officer, who will send copies to the sponsoring Department (if any) and all other parties concerned for consideration. In appropriate cases, at the request of the instructing officer, the draftsman may send copies direct to those concerned. Any alterations agreed by those concerned will be made by the draftsman, and if necessary, a further draft will be prepared for consideration. This process will be repeated until the draft is satisfactory to all concerned.

23. Prompt consideration should be given to drafts and the draftsman should be advised quickly of any alterations required. Draftsmen are usually working on several assignments at the same time so that, if queries raised by them are not considered promptly, the continuity of their consideration of the proposed legislation is interrupted and subsequently delay in picking up the threads is likely to occur.

24. A check list is annexed; it should be used in the preparation of drafting instructions except where clearly unnecessary.

## **Preparation of Drafting Instructions Check List**

### **1. Preliminary steps**

Refer all proposals to the Solicitor General for advice on legal policy matters, e.g. human rights issues and Basic Law issues.

### **2. General explanatory statement**

This should be comprehensive and set out:

- (a) background material and known legal implications;
- (b) the reasons for the proposals;
- (c) the principal objectives;
- (d) how these objectives are to be achieved;
- (e) how the proposed legislation is expected to operate; and
- (f) any known practical difficulties.

### **3. Detailed Instructions**

These should set out all matters to be dealt with in the proposed legislation including:

- (a) every requirement considered necessary to effect the proposals;
- (b) administrative provisions required, the level at which statutory functions will be discharged and any provision for delegation;
- (c) reference to any useful legislative precedents;
- (d) the nature of penalties or sanctions desired;
- (e) the relative gravity of proposed offences;
- (f) existing provisions that require amendment including consequential amendments;
- (g) transitional and saving provisions required;
- (h) retrospective provisions required;
- (i) all regulation-making powers required;
- (j) any preference for a particular form of legislation;
- (k) references to or copies of relevant committee reports, etc.;
- (l) references to or copies of legal decisions or opinions, etc.;

- (m) commencement of the proposed legislation, particularly if it is to be phased in;
- (n) if persons or property will be affected, what compensation and appeals if any are proposed;
- (o) whether the "State" (as defined in section 3 of the Interpretation and General Clauses Ordinance, Cap. 1) or particular organs of it are to be bound;
- (p) if it is envisaged that the procedure under section 4(3) of the Official Languages Ordinance will be invoked, a statement to that effect; and
- (q) any assistance which can be given as to the appropriate technical terms in Chinese.

**4. The detailed instructions should:**

- (a) be in memorandum or tabular form;
- (b) be in simple non-technical language;
- (c) not seek legislative provision for matters that can be dealt with administratively; and
- (d) not seek inclusion of purely informative provisions which are not to have any legal effect.

**5. Approval**

The drafting instructions (i.e. both general statement and detailed instructions) must be approved personally by:

- (a) the Head(s) of Department concerned; and
- (b) the Director of Bureau.

**6. The Law Draftsman should be furnished with:**

- (a) the name and telephone number of the instructing officer and, where the instructing officer is responsible for only one of the two texts, the name and telephone number of the officer responsible for the text in the other official language; and
- (b) a list of the Departments and other addressees to whom the draft legislation will be circulated in due course.

## Appendix 4

### Legislative Process—Timetable of a Bill

(Up to First Reading/Second Reading Motion)

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Action	Earliest Day
Approved Bill submitted for clearance by/on behalf of Secretary for Justice	1
Bill submitted to Clerk to the Executive Council	7
Executive Council approval	20
Brief issued to Legislative Council	22
Bill gazetted	30
(Legislative Council) First Reading, and Second Reading moved	41

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《法例發布條例》

Legislation Publication Ordinance

第 614 章

第 1 部  
第 1 條Part 1  
Section 15  
CAP. 614**第 614 章****Chapter 614****《法例發布條例》****Legislation Publication Ordinance**

本條例旨在就設立一個法例電子資料庫，並認可一個可將該資料庫內的資料發布及供人取覽的網站，訂定條文；給予在認可網站發布的法例文本法律地位；就對條例作出編輯修訂及修正的權力，訂定條文；就為編製香港法例活頁版增訂編輯權力，訂定條文；就相關事宜，訂定條文；以及作出相應修訂。

An Ordinance to provide for the establishment of an electronic database of legislation and approval of a website on which the information in the database may be published and accessed; to give legal status to copies of the legislation published on an approved website; to provide for powers to make editorial amendments and revisions to Ordinances; to provide for additional editorial powers for preparation of the loose-leaf edition of the Laws of Hong Kong; to provide for related matters; and to make consequential amendments.

[第 1 部、第 5 部及第 7 部第 1 分部、  
第 2 分部 (第 27 條除外)、第 4 分  
部 (第 29 及 30 條除外) 及第 5 分  
部 } 2011 年 6 月 30 日]

[Part 1, Part 5 and Division 1, Division  
2 (except section 27), Division 4  
(except sections 29 and 30) and  
Division 5 of Part 7 } 30 June 2011]

**第 1 部****Part 1****導言****Preliminary****1. 簡稱及生效日期**

(1) 本條例可引稱為《法例發布條例》。

**1. Short title and commencement**

(1) This Ordinance may be cited as the Legislation Publication Ordinance.

(2) 除第 (3) 款另有規定外，本條例自律政司司長以憲報公告指定的日期起實施。

(3) (已失時效而略去)

## 2. 釋義

(1) 在本條例中——

**刊憲文本** (gazetted copy) 就某條例而言，指該條例最初制定、訂立或作出時於憲報刊登的文本；

**官方核證標記** (official verification mark) 指法律草擬專員為施行第 2 部而在認可網站指明的符號、字或詞句或任何符號、字或詞句的組合；

**許可修訂** (permitted amendment) 就某條例而言，指——

- (a) 另一條例對該條例作出的修訂；
- (b) 對該條例作出的編輯修訂；或
- (c) 根據《1990 年法例 (活頁版) 條例》(1990 年第 51 號) 第 2A(1) 條對該條例作出的修訂；

**資料庫** (database) 指根據第 3(a) 條設立的在香港適用的法例的電子資料庫；

**資料庫文書** (database instrument) 指條例、《基本法》、在香港實施的全國性法律或第 4(2)(b) 條所提述的材料或資料；

**經核證文本** (verified copy)——見第 5(1) 條；

**認可網站** (approved website) 指根據第 3(b) 條認可的網站；

**編訂文本** (consolidated copy) 就某條例而言，指顯示該條例的以下版本的內文的文本：經所有於該文本中指明的日期已生效的許可修訂所修訂的內文；

(2) Subject to subsection (3), this Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

(3) (Omitted as spent)

## 2. Interpretation

(1) In this Ordinance—

**approved website** (認可網站) means a website approved under section 3(b);

**consolidated copy** (編訂文本), in relation to an Ordinance, means a copy of the Ordinance showing its text as amended by all permitted amendments that have taken effect as at a date specified in the copy;

**database** (資料庫) means the electronic database of the legislation applying in Hong Kong established under section 3(a);

**database instrument** (資料庫文書) means an Ordinance, the Basic Law, a national law applying in Hong Kong or an item of materials or information referred to in section 4(2)(b);

**editorial amendment** (編輯修訂) means an amendment to an Ordinance made under section 12;

**gazetted copy** (刊憲文本), in relation to an Ordinance, means a copy of the Ordinance as originally enacted or made, and published in the Gazette;

**official verification mark** (官方核證標記) means a symbol, word or statement, or a combination of any of them, specified by the Law Draftsman on an approved website for the purposes of Part 2;

**permitted amendment** (許可修訂), in relation to an Ordinance, means—

- (a) an amendment to the Ordinance made by another Ordinance;

## Appendix 6

### Sample page of BLIS

Chapter:	610B	Title:	<b>Buildings Energy Efficiency (Registered Energy Assessors) Regulation</b>	Gazette Number:	L.N. 19 of 2011
Section:	2	Heading:	<b>Interpretation</b>	Version Date:	21/03/2011

In this Regulation—

**correspondence address** (通訊地址), in relation to a registered energy assessor, means the address provided in the latest of the following—

- (a) an application form submitted under section 4 for the registration of the assessor;
- (b) an application form submitted under section 6 for the renewal of the registration of the assessor;
- (c) an application form submitted under section 8 for the registration of the assessor;
- (d) a notice given by the assessor under section 11;

**disciplinary board** (紀律委員會) means a disciplinary board appointed under section 16;

**submitted qualification** (已呈報資格), in relation to a registered energy assessor registered by virtue of section 5(2), means the qualification provided in the latest of the following—

- (a) an application form submitted under section 4 for the registration of the assessor;
- (b) an application form submitted under section 6 for the renewal of the registration of the assessor.

## Appendix 7

### Principal features of BLIS

#### (a) Content

This database contains primary and subsidiary legislation in both English and Chinese. It also has a bilingual glossary of terms used in the legislation. The database does not contain Bills, or amending enactments that are not yet in force. Whole new laws (i.e. not laws that merely amend other legislation) that are not yet in force are included with a covering note to that effect.

#### (b) Structure

Each section, schedule, regulation, rule, bylaw, etc., is a separate document in the database.

#### (c) Currency

Updating of the database is done online. We aim to complete the updating within 2-3 weeks after the amendments to the affected provisions come into operation. In order to better inform the public of the current state of the affected provisions during the updating period, pencil sign(s) (✎), embedded with hyperlink(s) to the relevant instruments (e.g. Ordinances, Legal Notices or Editorial Records), will appear in the database the day after the amendments to the affected provisions come into operation. The pencil sign(s) (✎) and the relevant hyperlink(s) will be removed once the affected provisions are updated.

#### (d) Search functions

In common with most text search engines, readers can search for individual terms, combined terms, alternative terms, excluded terms, phrases, and terms related by proximity to each other.

#### (e) Copy and export functions

Readers can copy and paste the text from BLIS into their own email or word processing documents. A convenient facility to export text directly into a Microsoft Word document is also provided.

#### (f) Viewing an enactment

Finding and viewing a particular enactment can be done by moving the scroll bar through the list of enactments or by doing a simple search for the relevant title or chapter number.



**(g) Law as at a particular date**

One of the most significant features of BLIS is that readers are not restricted to viewing the current law. All changes to the law after 30 June 1997 are stored as separate documents and readers are able to choose to view the current law or the law as at any date on or after 30 June 1997. Readers can also easily check to see if changes have been made to a particular section between any 2 specified dates.

**(h) Bilingual text**

The database in BLIS is available in English and Chinese (in traditional Chinese characters only). BLIS at [www.legislation.gov.hk](http://www.legislation.gov.hk) provides also a Simplified Chinese version.

**(i) Sort by relevance**

When a search is performed, the sections that have the most search terms are presented first, but readers can also change the order to sort by Chapter number and section number.

**(j) Preview**

It is not necessary to open a document to see its contents. A Preview Pane can be invoked that will display the selected section content at the bottom of the screen.

**(k) Word variants**

Readers can specify that a search should return common variations of terms. For example, a search for “canopy” will return “canopy” as well as “canopies”.

**(l) Upper/lower case**

Readers can restrict the search return to capitalized words.

**(m) No excluded words**

Common words such as “the”, “a”, “in”, “of”, “this”, etc. are not excluded from a phrase search. It is therefore possible, for example, to search for “Chief Executive in Council”.

**(n) Whole enactment mode in BLIS on Internet**

The complete text of the current version of an Ordinance or subsidiary legislation (in a PDF file) can be viewed, downloaded and printed at [www.legislation.gov.hk](http://www.legislation.gov.hk).

**(o) Mobile BLIS**

A user-friendly display of BLIS on the Internet is available for popular mobile devices in the market (e.g. iOS 3.0 or above and Android 2.1 or above).