

Legislation about Legislation

*A general overview of Hong Kong's Interpretation and General Clauses Ordinance (Cap. 1)*¹

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1. Introduction

Locally made legislation² is the most important source of new law in Hong Kong. Legislation is the set of written rules that regulate society and communicate government policy decisions that have legal consequences for the public. In step with the rapid development of society in Hong Kong, the volume of local legislation has inevitably grown³. This phenomenon is common to all jurisdictions. The question of how to shape this increasing volume of legislation in a way that makes the law clear, precise and accessible has always been a concern for legislators, legislative drafters and members of society who are interested in upholding the rule of law. Many jurisdictions have made great efforts to enhance the comprehensibility of their legislation. Laws that are well prepared and presented are more easily understood and more easily enforced by the authorities and complied with by citizens⁴. In this way, clear legislation plays an important role in the smooth operation of a just society. In addition the costs incurred in litigation and in seeking legal advice may also be considerably reduced.

Most common law jurisdictions⁵, including Hong Kong, have tried to shape their statute books by enacting “legislation about legislation”⁶. The

¹ An abridged version of this article was published in issue 5, 2010 of China Law.

² In Hong Kong, principal legislation (known as an “ordinance”) is made by the Legislative Council. According to Article 73(1) of the Basic Law of the Hong Kong Special Administrative Region of the People’s Republic of China, “[T]he Legislative Council of the Hong Kong Special Administrative Region shall exercise the following powers and functions . . . To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures”. A great deal of subsidiary legislation is also made by the government and other bodies under delegated powers. For example, an ordinance may delegate to the Chief Executive in Council (the Chief Executive with the advice of the Executive Council) the power to make regulations to deal with the details of the implementation of a legislative scheme.

³ As at 30 June, 2010, Hong Kong has a total of 684 Ordinances and 1,397 items of subsidiary legislation covering approximately 40,576 pages of printed bilingual text.

⁴ Please also see *A New Interpretation Act – To avoid “Prolivity and Tautology”* NZLCR17, at pp. 4–5.

⁵ For example, the UK Interpretation Act 1978 and the Interpretation Acts in force in the various Australian and Canadian jurisdictions.

⁶ This article will not deal with instruments that contain provisions regulating the basic structure of statutes. For example, Rule 50 of the Rules of Procedure of the Legislative Council of the Hong Kong Special Administrative Region provides that a “bill” (draft legislation submitted to the Legislative Council for passage) must have a short title corresponding with the title by which it is to be cited if it becomes law, and that the short title cannot be changed throughout the passage of the bill (Rule 50(2)).

United Kingdom's Interpretation Act 1850 was the first statute of this kind which attempted to marshal the complex language of legislation into a coherent and uniform style. Commonly known as "Brougham's Act"⁷, the statute was described by its long title as "[A]n Act for shortening the Language used in Acts of Parliament". Brougham's Act provided all the Acts that were subsequently passed by the United Kingdom's legislature with a number of general statutory definitions and rules of construction. Before the enactment of that Act, there were on the statute book no general interpretation provisions but there were several interpretation provisions which were limited in their scope to particular classes of statute⁸.

2. The functions of interpretation statutes

According to G. C. Thornton, an interpretation statute generally serves three main functions. These functions are to shorten and simplify written laws by providing the means to eliminate unnecessary repetition, to encourage consistency of language, and to make clear the legal effect by establishing rules of construction⁹. In practice, these objectives can be achieved by¹⁰ –

- providing standard sets of provisions regulating aspects of the operation of legislation;
- implying powers additional to those expressly conferred in legislation; and
- providing standard definitions of words and expressions that are commonly used in legislation.

It should be noted however that an interpretation statute does not operate in such a way as to change the essential effect of legislation to which it applies¹¹. Its operation is subject to any contrary intention appearing either expressly in the relevant piece of legislation or impliedly from its context¹².

A bill must be given a long title setting out the purposes of the bill in general terms (Rule 50(3)). A bill must be divided into clauses numbered consecutively and there must be a descriptive section heading above each clause (Rule 50(6)).

⁷ 13 & 14 Vict c 21 (1850).

⁸ For example, the Criminal Law Act 1827 section 14 and Criminal Law (Ireland) Act 1828 section 35.

⁹ G. C. Thornton stated in *Legislative Drafting* (4th ed., 1996) (p. 112) that an interpretation statute generally serves three main functions –

- (i) to shorten and simplify written laws by enabling needless repetition to be avoided;
- (ii) to promote consistency of form and language in written laws by including standard definitions of terms commonly used; and
- (iii) to clarify the effect of laws by enacting rules of construction.

But it seems that (i) and (ii) could be merged into one principle, and that is, to shorten and simplify written laws.

¹⁰ *A New Interpretation Act – To avoid "Prolivity and Tautology"* NZLCR17, at p. 3.

¹¹ F. A. R. Bennion, *Bennion on Statutory Interpretation: A Code* (LexisNexis, 5th ed., 2008) at p. 576, citing *Blue Metal Industries Ltd v R W Dilley* [1970] AC 827, per Lord Morris of Borth-y-Gest at p. 848.

¹² Section 2(1) of Cap. 1 – "Save where the contrary intention appears either from this Ordinance or from the context of any other Ordinance or instrument, the provisions of this Ordinance shall apply to this Ordinance and to any other Ordinance in force, whether such other Ordinance came or comes into

3. Hong Kong's Interpretation Statute

Hong Kong's first interpretation statute was enacted on 22 May 1867. The Interpretation Ordinance 1867 (No. 1 of 1867) carried the long title of "[A]n Ordinance ... for embodying in One Ordinance, the Definition of Words and Expressions ordinarily adopted in different Ordinances, and Rules of Court". The Ordinance contained five sections. Section 2¹³ listed words and expressions which would "if inserted in any Ordinance or Rule of Court hereafter to be passed, be understood as hereinafter defined or explained, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such Definition or Explanation". A few of the original 15 definitions are still relevant today. The definition of the word "person"¹⁴, for example, was defined to include a body corporate, and the word "month" was defined to mean a calendar month. Sections 3, 4 and 5 of the Ordinance provided respectively for a general rule of construction for the expression "public officer", for the calculation of periods of time in legislation, and for the treatment of general issues, such as the use of the plural and singular forms in the English language.

Over the course of the century, the Interpretation Ordinance underwent numerous amendments. The original Ordinance of 1867 was consolidated into the Interpretation Ordinance 1911 (No. 31 of 1911) and subsequently replaced by the Interpretation Ordinance 1950 (No. 2 of 1950). In 1966, the Interpretation and General Clauses Ordinance (Cap. 1) superseded the Interpretation Ordinance 1950 and is the interpretation statute that is currently in force in Hong Kong. When it was submitted before the legislature in 1966, it was introduced as having a dual purpose –

"As its title implies, the Interpretation and General Clauses Ordinance has two main tasks. Firstly, it defines words and expressions which frequently appear in enactments so that it becomes unnecessary to include a definition of them in each separate piece of legislation. Secondly, it performs a residuary function, containing a number of general provisions and powers which are applicable in relation to many other pieces of legislation,

operation before or after the commencement of this Ordinance, and to any instrument made or issued under or by virtue of any such Ordinance."

¹³ Section 1 provides for the short title of the Ordinance.

¹⁴ The word "person" is now defined in section 3 of Cap. 1 to include "any public body and any body of persons, corporate or unincorporate, and this definition shall apply notwithstanding that the word 'person' occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation". It should be noted that in order to cater for the Chinese text of Hong Kong legislation, Cap. 1 also provides for various Chinese equivalents for the word "person" (人、人士、個人、人物、人選).

but for which it is difficult to find an appropriate place in the laws.”¹⁵.

Since then, the current version of Cap. 1 has gone a step further by providing some key rules of statutory interpretation.

This article will discuss how Cap. 1 makes legislation more concise and intelligible by providing sets of provisions of general application, by implying powers and by defining frequently used words. It will also discuss the key rules of construction provided by Cap. 1 and explore how these rules facilitate the interpretation of bilingual legislation in Hong Kong. In conclusion, there will be comments on the extent to which Cap. 1 has promoted the comprehensibility of Hong Kong’s legislation.

4. How the provisions of Cap. 1 simplify legislation

A. The operation of legislation

It is helpful to look at a few provisions that demonstrate how Cap. 1 supports and regulates the operation of legislation.

(a) Commencement of legislation

Although it is essential for enforcement agents and members of the public to know the exact time when a piece of legislation or a part of it is to take effect, it would be repetitious to include in every case a provision as to its commencement date. Sections 20(2) and 28(3) of Cap. 1 lay down the general rule for the commencement of legislation. According to this rule, a piece of legislation, or any provision of a piece of legislation, is to come into operation at the beginning of the day on which it is published in the Government Gazette. This rule is to apply if the legislation concerned is silent on the date of its commencement, but is not to apply if the legislation provides otherwise and another day has been appointed for the legislation or any of its provisions to commence. In that case, the legislation, or the provision in question, is to come into operation on the appointed day.

¹⁵ The *Hansard* (1966) of Hong Kong Legislative Council, at p. 379.

Example 1

“This Ordinance comes into operation on 9 November 2009.”

~ Section 2 of the Village Representative Election Legislation (Miscellaneous Amendments) Ordinance 2009 (12 of 2009)

[Note: The Village Representative Election Legislation (Miscellaneous Amendments) Ordinance 2009 was gazetted on 30 October 2009 but came into operation on 9 November 2009.]

Example 2

“(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Food and Health by notice published in the Gazette.”

~ Section 1(2) of the Prevention and Control of Disease Ordinance (Cap. 599)

[Note: In this case, 14 July 2008 was appointed by the Secretary for Food and Health by legal notice published in the Government Gazette, and the Ordinance came into operation on that day.]

(b) Computation of time

It is critical for any person who is affected by a period of time that is specified in legislation to be certain about the beginning and the end of the period. Almost invariably, failing to comply with a statutory period can lead to an offence or loss of rights. Section 71 of Cap. 1 establishes a uniform method for reckoning time that aims to clear away any confusion or possible disputes. The following examples illustrate the type of interpretative issues involved –

- in computing time for the purposes of any legislation, a period of days from the happening of any event or the doing of any act or thing is taken to be exclusive of the day on which the event happens or the act or thing is done¹⁶;
- if the last day of the period is a public holiday or a gale warning day or black rainstorm warning day, then the period

¹⁶ Section 71(1)(a) of Cap. 1.

- will include the next following day, not being a public holiday or a gale warning day or black rainstorm warning day¹⁷;
- if any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day is a public holiday or a gale warning day or black rainstorm warning day, the act or proceeding will be considered as done or taken on time if it is done or taken on the next following day, not being a public holiday or a gale warning day or black rainstorm warning day¹⁸;
 - if any act or proceeding is directed or allowed to be done or taken within any time not exceeding 6 days, then no public holiday or gale warning day or black rainstorm warning day will be reckoned in the computation of that time¹⁹.

Applying these rules to legislation may effectively shorten provisions that require certain things to be done within a period of time, because it removes the need to mention the finer details involved in the computation of time in the relevant legislation. For example, section 19(4) of the Film Censorship Ordinance (Cap. 392) provides that if certain documents are served under a legal requirement, the relevant authority must, after the expiration of Z days from the service of those documents, do something in accordance with the requirement of the law. In reliance on section 71 of Cap. 1, there is no need for the provision to further provide for matters concerning the computation of time.

(c) Delivery of documents by post

Legislation occasionally contains provisions that require documents, such as notices, to be delivered, either by the relevant authorities to the affected persons or by the affected persons to the relevant authorities. Delivery by post is a common mode of delivery and it is understandable that questions or disputes may arise concerning whether a document has actually been delivered by the post. Section 8 of Cap. 1 provides for a general rule to resolve any ambiguities in interpretation. The section states that service of a document on a person by post is deemed to be effected only when it is properly addressed, the postage is pre-paid and the document is dispatched by post to the recipient's last known postal address. Unless the contrary is proved, the service is deemed to be effected at the time at which the document would be delivered in the ordinary course of post.

Example

¹⁷ Section 71(1)(b) of Cap. 1.

¹⁸ Section 71(1)(c) of Cap. 1.

¹⁹ Section 71(1)(d) of Cap. 1.

“(10) Service of a copy of the authorization [*of an election expense agent to incur election expenses at or in connection with an election*] may be effected by delivery by hand, by post or by facsimile transmission.”

~ Section 25(10) of the Electoral Affairs Commission (Electoral Procedure) (Legislative Council) Regulation (Cap. 541 sub. leg. D)

[*Note: It is not necessary to provide how and when service by post is taken to be effected. This is dealt with by section 8 of Cap. 1.*]

B. Provisions that imply additional powers

To carry out the policy behind a piece of legislation, it may be necessary to give powers to designated people or authorities in order to enforce the relevant provisions. Cap. 1 helps to shorten statutory provisions by implying commonly used powers so that individual statutes need not repeat similar provisions. The following paragraphs contain two examples of these implied powers.

(a) Establishment of statutory bodies

The Hong Kong Special Administrative Region Government relies on a wide range of statutory bodies to give advice on or implement policies²⁰, including the Public Service Commission²¹, the Equal Opportunities Commission²², the Banking Advisory Committee²³ and the Advisory Committee on Travel Agents²⁴.

Legislation that establishes statutory bodies may conveniently rely on the relevant provisions in Cap. 1 for general matters such as the appointment of personnel and proceedings and the organization of the statutory bodies. For example –

- a person who is empowered to make an appointment for a body will also have the power to remove, suspend, dismiss or revoke the appointee²⁵;

²⁰ *Consultation paper: Review of the Roles and Functions of Public Sector Advisory and Statutory Bodies*, published by Home Affairs Bureau, HKSARG, April 2003. For a classification of these bodies, please see paragraphs 6 to 14 of the paper. http://www.hab.gov.hk/file_manager/en/documents/whats_new/advisory_and_statutory_bodies/ASBmempaper.pdf

²¹ Established by the Public Service Commission Ordinance (Cap. 93).

²² Established by the Sex Discrimination Ordinance (Cap. 480).

²³ Established by the Banking Ordinance (Cap. 155).

²⁴ Established by the Travel Agents Ordinance (Cap. 218).

²⁵ Section 42(a) of Cap. 1.

- an appointment made under the provisions of any legislation may be made retrospectively²⁶;
- a power to appoint the members of a body will automatically include the power to appoint the chairperson, deputy chairperson, vice-chairperson and secretary of the body²⁷;
- a power to appoint the members of a body will, even without express words, include the power to appoint a public officer by official designation²⁸;
- a power to appoint the members of a body will include the power to appoint alternate members and temporary members²⁹;
- the powers of a body are not affected by a vacancy in membership, a defect in the appointment or qualification of a member, or any minor irregularity in the convening of a meeting³⁰;
- the powers of a body may be exercised by the majority of the members of the body³¹ and the chairperson has a casting as well as a deliberative vote on all matters in which a decision is taken by vote³²;
- if a body has a common seal, the seal may only be affixed on documents by the chairperson or any member appointed by the chairperson to do so, and then authenticated by the signature of the chairperson or that member³³.

²⁶ Section 47 of Cap. 1.

²⁷ Section 48 of Cap. 1.

²⁸ Section 49 of Cap. 1.

²⁹ Section 50 of Cap. 1.

³⁰ Section 51 of Cap. 1.

³¹ Section 52(1) of Cap. 1.

³² Section 52(2) of Cap. 1.

³³ Section 53 of Cap. 1.

Example

“(1) The Chief Executive may establish an Advisory Committee consisting of such members as he may appoint.

(2) The Advisory Committee shall advise the Director upon any question that he may refer to it in connection with the administration of this Ordinance.

(3) The Advisory Committee established under section 14 of the repealed Ordinance shall be treated as the Advisory Committee established under this section.”

~ Section 49(1), (2) and (3) of the Protection of Endangered Species of Animals and Plants Ordinance (Cap. 586)

[Note: The section does not contain a provision on the operation of the Committee, such as the members' period of office, their removal and reappointment, and how the powers of the Committee may be affected if there is any vacancy in the Committee. These matters may be dealt with in accordance with the relevant provisions in Cap. 1, which frees up the section to focus on the special issues relating to the Committee, such as its purpose and the relationship between the Committee and its predecessor under the repealed Animals and Plants (Protection of Endangered Species) Ordinance (Cap. 187).]

(b) Delegation of power

In some cases, legislation allows a person who is empowered to do certain things to delegate the power to another person. This delegation of power raises important questions such as whether the delegating person may still continue to exercise the power and whether the person may set any conditions or limitations on the delegation. Section 44 of Cap. 1 explains the general position on this. Subsection (1)(a) provides that the delegation does not preclude the delegating person from exercising or performing the powers or duties delegated, and subsection (1)(b) provides that the delegation may be conditional, qualified or limited. Therefore, unless the policy in an item of legislation regarding delegation deviates from the principles in Cap. 1, it is not necessary for a delegation provision to deal with the above questions. The provision may simply provide for matters that are specific to that delegation, for example, whether sub-delegation is allowed and whether certain powers may not be delegated.

Example

“(1) The Secretary [*for the Environment*] may in writing delegate any of his functions under section 47 to a public officer.

(2) The Director [*of Environmental Protection*] may in writing delegate any of his functions under this Ordinance, other than the functions under this subsection [*the power to delegate*] and section 38 [*the power to appoint any public officer to be an authorized officer for the purposes of this Ordinance*], to a public officer.

(3) In this section, “functions” (職能) includes powers and duties.”

~ Section 48 of the Hazardous Chemicals Control Ordinance (Cap. 595)

C. Definitions of words and expressions

Section 3 of Cap. 1 may be treated as a “dictionary” of words and expressions that are commonly used in legislation. There are three general characteristics³⁴ of the definitions included in Cap. 1 –

- the words and expressions defined are usually frequently used in legislation;
- these definitions are not subject to frequent exclusion either expressly or by context in the legislation to which they apply;
- the meaning given by these definitions are in general within the ordinary meaning or usage of the words and expressions to which they apply.

Furthermore some definitions contained in section 3 of Cap. 1 extend or restrict the meaning of certain words and expressions, or provide abbreviated forms for certain words and expressions. The Appendix to this article contains examples of these definitions.

Unless a word or expression in a piece of legislation is intended to convey a different meaning from that provided in Cap. 1, it is unnecessary to add a definition of that word or expression in each new piece of legislation. In this way, the Cap. 1 dictionary significantly shortens legislation and promotes a greater consistency of form.

5. Rules of statutory interpretation

³⁴ *A New Interpretation Act – To avoid “Prolixity and Tautology”* NZLCR17, at p. 131, paragraph 362.

Under the common law system, it is the court's duty to construe the legislation involved in the case before it and, in this instance, the court is the legal interpreter³⁵ of the legislation. The legal interpreter's duty is to arrive at the legal meaning of the relevant provision, which may not necessarily be the same as its grammatical meaning³⁶, and this must be done in accordance with the common law rules governing the interpretation of legislation³⁷. Cap. 1 facilitates the task of interpreters in general by providing guidelines on statutory interpretation, many of which complement the common law rules.

A. The purposive approach

In *Medical Council of Hong Kong v Chow Siu Shek David*³⁸, the Court of Final Appeal stated: “When the true position under a statute is to be ascertained by interpretation, it is necessary to read all of the relevant provisions together and in the context of the whole statute as a purposive unity in its appropriate legal and social setting. Furthermore it is necessary to identify the interpretative considerations involved and then, if they conflict, to weigh and balance them”³⁹. The Court of Final Appeal's broad statement summarizes the modern approach to statutory interpretation, which is commonly referred to as the “purposive approach”.

Section 19 of Cap. 1 has been recognized by the courts as giving statutory recognition to the purposive approach.⁴⁰

“An Ordinance shall be deemed to be remedial and shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Ordinance according to its true intent, meaning and spirit.”

~ Section 19 of Cap. 1

³⁵ According to F. A. R. Bennion, *Bennion on Statutory Interpretation: A Code* (LexisNexis, 5th ed., 2008) at pp. 26–36, there are four types of “interpreter”, namely, the legislator, courts and other enforcement agencies, the jurist or text writer, and the subject who is bound by legislation.

³⁶ See Bennion (above) at p. 24.

³⁷ The common law rules governing the interpretation of legislation are voluminous. They include binding rules of interpretation, principles derived from general legal policy, presumptions as to legislative intent and linguistic canons of construction. This article deals only with a selected number, which are reflected in the provisions of Cap. 1. As regards the rules of statutory interpretation in general, reference can be made to Bennion (above); P. St. J. Langan, *Maxwell on the Interpretation of Statutes*, Butterworths, 12th ed., 2008; Daniel Greenberg, ed., *Craies on Legislation*, London, Sweet & Maxwell, 8th ed., 2004; and other texts on the subject.

³⁸ [2000] 2 HKC 428.

³⁹ *Medical Council of Hong Kong v Chow Siu Shek David*, per Mr. Justice Bokhary PJ at p. 438F.

⁴⁰ Cf. *Town Planning Board v Society for the Protection of the Harbour Ltd.* (2004) 7 HKCFAR 1 at p. 14, paragraph 29; *Leung Sai Lun Robert and Others v Leung May Ling and Others* [1998] 1 HKC 26 (Court of Appeal) at p. 34; *Attorney General v John Lok and Partners and Others* [1986] HKLR 325 (High Court) at p. 334E; *Aik San Realty Ltd. v Attorney General of Hong Kong* [1982] 1 HKC 320 (Privy Council) at p. 321H.

Under the purposive approach and section 19 of Cap. 1, the statutory language is to be construed having regard to the context of the legislation and its object or purpose. The ordinary and natural meaning of words should be adopted, unless the context or purpose points to a different meaning. The context and purpose of the statute must be considered in the first instance, and not merely at some later stage when an ambiguity may be thought to arise.⁴¹ The “context” is to be understood in its widest sense⁴², and understanding the context is a vital part of the exercise⁴³. This article now turns to an analysis of the separate parts of section 19 of Cap. 1 with contextual examples from court cases that have given interpretations of the rule.

(a) Deemed to be remedial

Section 19 of Cap. 1 first deems legislation to be “remedial”. This provision reflects the rule in *Heydon’s Case*⁴⁴, which is known as the “mischief” rule of statutory interpretation and is an early example of the purposive approach⁴⁵. The rule is based on the presumption that, in enacting legislation, the legislature has targeted a particular mischief or problem and has provided a remedy for it. Under this rule, the court will examine the statute and its legislative history to ascertain the mischief it was designed to remedy and then will apply an interpretation that will best achieve the remedial effect⁴⁶.

That legislation is to be treated as “remedial” was noted by the Court of Final Appeal in *Wong Hon Sun v HKSAR*⁴⁷. In *Wong Hon Sun*, the Court had to consider the scope of the powers conferred on a magistrate to order the forfeiture of seized goods under section 28(7) of the Import and Export Ordinance (Cap. 60). Before the enactment of section 28(7), forfeiture of

⁴¹ *HKSAR v Lam Kwong Wai and Another* (2006) 9 HKCFAR 574 at p. 606E; *HKSAR v Cheung Kwun Yin* [2009] 6 HKC 22 (Court of Final Appeal) at p. 28, paragraph 12.

⁴² *HKSAR v Cheung Kwun Yin* [2009] 6 HKC 22 at p. 28, paragraph 13; *HKSAR v Lam Kwong Wai and Another* (2006) 9 HKCFAR 574 at p. 606E; *Town Planning Board v Society for the Protection of the Harbour Ltd.* (2004) 7 HKCFAR 1 at p. 13, paragraph 28. In general terms, the “context” refers to the factual, social and legal background to the statute under consideration. The context therefore includes, with certain exceptions, everything that may assist the legal interpreter in ascertaining the meaning of the statute. The legal background includes the text of the statute including its legislative history, statutes of a similar nature, the common law, judicial practice and procedure and, to the extent it is relevant, international law.

⁴³ *Lam Kin Sum v Hong Kong Housing Authority* [2005] 3 HKLRD 456 (Court of Appeal), per Stock JA at p. 481, paragraph 55.

⁴⁴ (1584) 3 Co. Rep. 7a.

⁴⁵ *Town Planning Board v Society for the Protection of the Harbour Ltd.* (2004) 7 HKCFAR 1 at p. 14, paragraph 29; *Leung Sai Lun Robert and Others v Leung May Ling and Others* [1998] 1 HKC 26 (Court of Appeal) at p. 34D.

⁴⁶ Deeming legislation to be “remedial” should not be confused with the concept of a “remedial interpretation”, under which (i) words may be read into a statute to correct a drafting error, or (ii) the statute may be “read down” in order to uphold the legal validity of the legislation. See, generally, *Chan Pun Chung and Another v HKSAR* (2000) 3 HKCFAR 392 for the first case and *HKSAR v Lam Kwong Wai and Another* (2006) 9 HKCFAR 574 for the second.

⁴⁷ [2010] 1 HKC 18.

seized goods was mandatory but the enforcement regime was amended to give the magistrate discretionary powers in relation to forfeiture. In ascertaining the legislative intention, the Court of Final Appeal reviewed the legislative history of section 28(7) and concluded that the change from a mandatory regime to a discretionary regime was obviously intended to be remedial, as section 19 of Cap. 1 deemed it to be. The Court held that the introduction of the discretionary regime was designed to soften the harsh impact of mandatory forfeiture on the innocent owner of goods that were liable to forfeiture, by giving the magistrate the discretion to order the goods to be delivered to the owner instead. Mr. Justice Bokhary PJ cautioned that “care must be taken not to read into reforming legislation anything that would render it only partially remedial”⁴⁸.

Deeming legislation to be remedial is not however the end of the interpretative process. As Mr. Justice Bokhary PJ pointed out in the *Medical Council of Hong Kong v Chow Siu Shek David* case: “Section 19 plainly establishes that legislation is to be interpreted as being remedial. But beyond that the section deals with what is to be done rather than how to do it”⁴⁹.

(b) Fair, large and liberal construction

Section 19 of Cap. 1 next provides that legislation is to be given a “fair, large and liberal construction”. The “fairness” at which section 19 is aimed is not fairness in the result but fairness in the interpretation⁵⁰. It is presumed though that the legislature does not intend for legislation to produce an injustice⁵¹. This means that the courts should not take a narrow linguistic approach but neither should they take such a broad linguistic approach that it would defeat the intention of the legislature. The courts must strike a balance.

This approach is illustrated by the Court of Appeal’s decision in *Chim Shing Chung v Commissioner of Correctional Services*⁵². In that case, the Court had to consider the meaning of rule 56 of the Prison Rules (Cap. 234 sub. leg. A), which provided that prisoners may receive books or periodicals “under such conditions as the Commissioner may determine”. The trial judge emphasized the use of the expression “under such conditions” in rule 56 rather than “on such conditions” and consequentially gave the rule a very narrow interpretation. The Court of Appeal held that this narrow linguistic approach to construction was unacceptable as it denied the enactment that “fair, large and liberal construction and interpretation” which section 19 of Cap. 1 required.

⁴⁸ At p. 26, paragraph 21.

⁴⁹ *Medical Council of Hong Kong v Chow Siu Shek David* at p. 438D.

⁵⁰ *R v Mirchandani and Others* [1977] HKLR 523 (Court of Appeal) at p. 530. Cf. *R v Klauser and Another* [1968] HKLR 201 at p. 214; *Re Minos Estate Ltd.*, HCMP1417/1981, 22 June 1982 (High Court) (Full Bench), per Kempster J.

⁵¹ *Lam Soon Trademark Ltd. v Commissioner of Inland Revenue* (2006) 9 HKCFAR 391 at p. 399, paragraph 20; *R v Lam Wu Nam and Others* [1973–1976] 1 HKC 467 (Court of Appeal) at p. 473B.

⁵² [1996] 6 HKPLR 313.

That said, the Court of Final Appeal commented in the *Chow Siu Shek David* case that “reasonable people may differ - and frequently do differ - over what would be fair, large and liberal”⁵³. In *Chow Siu Shek David*, the Court had to decide whether a registered medical practitioner, whose name had been removed from the medical register for a fixed period, was entitled to have his name automatically restored to the register after that period had expired. Having considered (i) the need to strike a balance between maintaining integrity within the profession and excluding persons who were otherwise qualified to practise, and (ii) the interpretation of the legislation in the context of legislation of a similar nature, the Court held that the medical practitioner was not entitled to automatic restoration to the register.

(c) Best ensure the attainment of the object of the Ordinance

Section 19 of Cap. 1 also calls for an interpretation that will “best ensure the attainment of the object of the Ordinance”, though it does not itself provide any practical guidance on how to go about achieving that result⁵⁴. The object or purpose of a statute is generally understood to refer to the intention of the legislature as expressed in the language of the statute.

As previously noted, the context of a statutory provision must be taken in its widest sense. Among other matters, the object or purpose of a statute may be ascertained from the long title to the original bill⁵⁵ and by reference to “extrinsic materials”⁵⁶, such as the Explanatory Memorandum attached to the bill⁵⁷ and the statements made by Ministers or other Government officials in the course of proceedings in the legislature⁵⁸. Where the statute in question

⁵³ *Medical Council of Hong Kong v Chow Siu Shek David* at p. 438C.

⁵⁴ *Medical Council of Hong Kong v Chow Siu Shek David* at p. 438D.

⁵⁵ The courts commonly refer to the long title to an ordinance or bill in ascertaining its purpose or the “mischief” at which it was aimed. If the purpose of an Ordinance is declared in its long title, then it governs the interpretation of that Ordinance: *Shiu Wing Steel Ltd. v Director of Environmental Protection* [2006] 3 HKLRD 33 (Court of Final Appeal).

⁵⁶ On the use of extrinsic materials in general, see “Report on Extrinsic Materials as an Aid to Statutory Interpretation”, Law Reform Commission of Hong Kong, March 1997.

⁵⁷ In *Secretary for Transport v Delight World Ltd* (2006) 9 HKCFAR 720, Mr. Justice Bokhary PJ stated at p. 730, paragraph 21: “It has been clearly recognised in Hong Kong since the decision of the Court of Appeal in *Elson-Vernon Knitters Ltd v Sino-Indo-American Spinners Ltd* [1972] HKLR 468 that an Explanatory Memorandum attached to a Bill is admissible as evidence of the mischief which it was the object of the proposed legislation to remedy.” See also *PCCW-HKT Telephone Ltd. v Telecommunications Authority* (2005) 8 HKCFAR 337 (Court of Final Appeal) at p. 351, paragraph 20 and *Director of Lands v Yin Shuen Enterprises Ltd* (2003) 6 HKCFAR 1 (Court of Final Appeal) at p. 15, paragraph 21.

⁵⁸ The extent to which the courts may make use of extrinsic materials generally as an aid to statutory interpretation is a matter of continuing debate in Hong Kong. Before the House of Lords decision in *Pepper v Hart* [1993] AC 593, the courts could only refer to parliamentary materials as an aid to understanding the mischief at which the statute was aimed, i.e., its object or purpose. *Pepper v Hart* relaxed this rule by allowing the courts to refer to certain parliamentary materials as an aid to understanding the *legislative intention* if the meaning of the statute was ambiguous or obscure or where an absurdity would result if the usual rules of interpretation were applied. *Pepper v Hart* was applied by the Court of Appeal in *Matheson PFC Ltd. v Jansen* [1994] 2 HKC 250 and in *Attorney General v*

implements the recommendations of an official report, such as a report of the Law Reform Commission, the report may be referred to in order to identify the purpose of the legislation⁵⁹.

In *HKSAR v Cheung Kwun Yin*⁶⁰, the Court of Final Appeal had to consider the purpose of section 18D(1) of the Theft Ordinance (Cap. 210), which criminalizes certain deceptive practices. Section 18D was added to the Theft Ordinance by the Theft (Amendment) Ordinance 1986 (No. 46 of 1986). The issue before the Court was whether section 18D was restricted to deceptions which targeted banks and deposit-taking companies only. In determining the purpose of the provision, the Court took into account the speech made by the Attorney General during the Second Reading of the Bill in the Legislative Council. The Court concluded that the Attorney General's comments could not be read as indicating that the purpose of section 18D was so restricted. Therefore the Court accepted the meaning which was evident from the broad wording used in section 18D itself, namely, that there was no limitation on the type of person on whom the deception was required to be practised.

(d) True intent, meaning and spirit

Section 19 of Cap. 1 further requires the court to have regard to the “true intent, meaning and spirit” of the legislation. The general rule is that words must be given their ordinary and natural meaning but, consistent with the purposive approach, the court may find it necessary on occasion to restrict or extend the meaning.

Shimizu Corp. [1997] 1 HKC 417 where the Court accepted that parliamentary materials could be used as an aid to interpretation for the purpose of resolving an ambiguity in the statute. In *Registrar of Births and Deaths v Syed Haider Yahya Hussain & Another* [2001] 4 HKCFAR 429, Mr. Justice Chan PJ, at p. 444, paragraph 55, cited *Pepper v Hart* for the principle that it was permissible to refer to debates in the Legislative Council for the purpose of ascertaining the intention of the legislature. However, more recent judicial pronouncements have raised doubts concerning the scope of its application in Hong Kong. In *Director of Lands v Yin Shuen Enterprises Ltd* (2003) 6 HKCFAR 1, Lord Millett NPJ, after referring to *Pepper v Hart*, stated at p. 15, paragraph 22 that “Such evidence is admissible for a limited purpose only, to enable the Court to understand the factual context in which the statute was enacted and the mischief at which it was aimed”. In other recent cases, the Court of Final Appeal has expressly left open the question of whether, and if so to what extent, the approach favoured in *Pepper v Hart* was appropriate for Hong Kong: *Lam Pak Chiu and Another v Tsang Mei Ying and Another* (2001) 4 HKCFAR 34 at p. 44D–E, *PCCW-HKT Telephone Ltd. v Telecommunications Authority* (2005) 8 HKCFAR 337 at p. 354, paragraph 28 and *HKSAR v Cheung Kwun Yin* [2009] 6 HKC 22 at p. 29, paragraph 17. The House of Lords (now the Supreme Court) has also expressed reservations concerning the scope of the rule in *Pepper v Hart*: cf. *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd* [2001] 2 AC 349, at p. 407 and *Robinson v Secretary of State for Northern Ireland* [2002] UKHL 32.

⁵⁹ *HKSAR v Cheung Kwun Yin* at p. 28, paragraph 14, *PCCW-HKT Telephone Ltd. v Telecommunications Authority* (2005) 8 HKCFAR 337 at p. 351F–J and *Director of Lands v Yin Shuen Enterprises Ltd* (2003) 6 HKCFAR 1 at p. 15A–H.

⁶⁰ See above.

In *Official Receiver & Trustee in Bankruptcy of Chan Wing Hing & Another*⁶¹, the Court of Final Appeal gave the words in question a slightly narrower meaning than their ordinary meaning. The Court was asked to construe the words “leaves Hong Kong” in section 30A(10) of the Bankruptcy Ordinance (Cap. 6) as referring only to a permanent departure from Hong Kong and as not including short absences for business or personal reasons. The Court decided that the words should be construed in their ordinary sense as meaning “departing Hong Kong”, whatever the length of the absence might be, but that absences of less than a day should be disregarded.

Furthermore the purposive approach presumes that the legislature does not intend a statute to go beyond what is necessary to remedy the mischief it was designed to remedy. This presumption was applied in *Ho Choi Wan v Hong Kong Housing Authority*⁶². In *Ho Choi Wan*, the Court of Final Appeal had to interpret the meaning of the word “variation” in section 16(1A) of the Housing Ordinance (Cap. 283), which provided a formula for varying the rent charged to tenants of public housing estates. The Court found that the legislative intent of section 16(1A) was to protect tenants from frequent or high rent increases. Although the word “variation”, according to its ordinary meaning, could include both upward and downward variations, the Court held that on a true construction of the statute, it must have been intended by the legislature to mean “upward variation” only. As Lord Millett NPJ explained –

“In enacting or amending an Ordinance, the Legislature’s purpose was to remedy a perceived mischief or defect in the pre-existing legislation. It was to be presumed that it did not intend the statute to go wider in its operation than was necessary to remedy this. If it had inadvertently employed general words which, if given their fullest effect, are wider than necessary, the court must restrict them by construing them in a narrower sense which, while still falling within the ordinary meaning of the words, gives effect to the legislative intent but does not go beyond it, still less frustrate it.”⁶³.

In *R v Soo Fat Ho*⁶⁴ the Court of Appeal was asked to give an extended meaning to the words “permit to be erected” in regulation 6(1) of the Marine Fish Culture Regulations (Cap. 353 sub. leg. A). The respondent Crown argued that the words should be construed to mean “permit to *remain* erected”, as was decided by the magistrate at trial. The Court of Appeal rejected this interpretation on the ground that it was not necessary to extend the ordinary and natural meaning of the words “permit to be erected” in order to best ensure the object of the regulation according to its “true intent, meaning and spirit”.

⁶¹ (2006) 9 HKCFAR 545 (Court of Final Appeal).

⁶² [2005] 4 HKLRD 706 (Court of Final Appeal).

⁶³ *Ho Choi Wan v Hong Kong Housing Authority* [2005] 4 HKLRD 706 at p. 709A.

⁶⁴ [1992] 2 HKLR 114.

In *Chan Siu Chung v Law Society of Hong Kong*⁶⁵, the Court of Appeal applied an extended meaning. In that case, the Court had to construe the words “where a firm acts for a client in relation to that client’s criminal litigation” in rule 5D of the Solicitors’ Practice Rules (Cap. 159 sub. leg. H). The appellant argued that the words should be interpreted as applying only to cases arising after the client was charged with an offence. The Court, having regard to the purpose of the Rules and section 19 of Cap. 1, rejected that view as being too narrow and interpreted the words in question as applying to any case where a firm acted prior to the client being charged.

B. Rules of construction of bilingual legislation: section 10B⁶⁶ of Cap. 1

(a) Section 10B(1) of Cap. 1

Section 4(1) of the Official Languages Ordinance (Cap. 5) provides that ordinances must, subject to certain exceptions, be enacted and published in both official languages⁶⁷. Indeed subsidiary legislation is generally also enacted and published in both official languages. Section 10B of Cap. 1 sets out the main rules relating to the interpretation of bilingual legislation.

“(1) The English language text and the Chinese language text of an Ordinance shall be equally authentic, and the Ordinance shall be construed accordingly.

(2) The provisions of an Ordinance are presumed to have the same meaning in each authentic text.”

~ Section 10B(1) and (2) of Cap. 1

Section 10B(1)⁶⁸ of Cap. 1 states the fundamental principle of equality between the two language versions of legislation in Hong Kong⁶⁹. It provides

⁶⁵ [1997] 2 HKC 373.

⁶⁶ Please also see *A paper Discussing Cases Where the Two Language Texts of an Enactment are Alleged to Be Different* published by the Law Drafting Division of Hong Kong’s Department of Justice <https://www.elegislation.gov.hk/interpretbileg?lang=en>

⁶⁷ It should be noted that until 1987 the Official Languages Ordinance (Cap. 5) had only provided for statutes to be enacted in the English language. Therefore, an authentic Chinese version of existing statutes that were originally enacted in English only was produced by the Law Drafting Division of Hong Kong SAR’s Department of Justice (formerly known as the Legal Department or the Attorney General’s Chambers). This Chinese version of statutes was declared authentic under section 4B of the Official Languages Ordinance by the former Governor in Council after consultation with the Bilingual Laws Advisory Committee. The orders declaring the authentic Chinese texts were laid on the table of the former Legislative Council for negative approval under section 34 of Cap. 1.

⁶⁸ Section 10B of Cap. 1 was modelled on Article 33 of the 1969 *Vienna Convention on the Law of Treaties*. This article makes reference mainly to the discussion on the drafting and interpretation of that Article in chapters 3 and 4 of Mala Tabory, *Multilingualism in International Law and Institutions* (Sijthoff & Noordhoff, 1980). Another similar provision can be found in the previous section 8(2) of the *Official Languages Act* of Canada, which was repealed in 1988. That section was worded

that both language texts of a piece of legislation are equally authentic and must be construed accordingly. This means that the Chinese text is neither subordinate to, nor a mere translation of, its English counterpart and, correspondingly, that the English text is neither subordinate to, nor a mere translation of, its Chinese counterpart. The two authentic texts together make up the legislation. Courts and legal representatives are therefore entitled to refer to and rely on both texts, whether the trial is conducted in English or in Chinese or partly in English and partly in Chinese⁷⁰.

Section 10B(2) of Cap. 1 provides that the provisions in legislation are presumed to have the same meaning in each authentic language text. The two texts are taken to communicate an equivalent message in their own fashion. They are but two expressions of the same intent and together constitute one law embodying a single meaning. Words and expressions used in one language should be taken to bear the same legal effect as their counterparts in the other language of the same piece of legislation.

(b) Resolution of divergence in meaning between two texts

However, the presumption in section 10B(2) of Cap. 1 does not help to resolve divergences in meanings or discrepancies in interpretation. If a comparison of the two texts reveals a clear discrepancy between the grammatical or legal meanings of the respective texts, then the reader has to move on to section 10B(3) of Cap. 1 to resolve the issue⁷¹.

“(3) Where a comparison of the authentic texts of an Ordinance discloses a difference of meaning which the rules of statutory interpretation ordinarily applicable do not resolve, the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance, shall be adopted.”

differently from section 10B of Cap. 1, and sought also to reconcile the underlying common law and civil law systems in different parts of Canada (see generally Michael Beaupr , *Interpreting Bilingual Legislation* (Carswell, 2nd ed., 1986) for the Canadian jurisprudence developed before and after the passage of section 8(2) of their *Official Languages Act*).

⁶⁹ With the passage of the Official Languages Ordinance (Cap. 5) in 1974, Chinese and English were established as the official languages of Hong Kong for the purposes of communication between the Government and the general public. Article 9 of the Basic Law provides that in addition to the Chinese language, English may be used as an official language by the executive authorities, legislature and judiciary of the Hong Kong Special Administrative Region. Article 9 serves as the constitutional source of authority for Hong Kong’s bilingual legal system.

⁷⁰ *R v Tam Yuk Ha* [1996] 3 HKC 606 (High Court). However, attention should be paid to the temporal application of the authentic Chinese text if the original legislation was originally enacted in English. This is where the two language versions of the same piece of legislation come into existence or take effect one after the other. The Chinese text of this kind should be regarded as operative from the date of its gazettal. It should not apply retrospectively to factual situations that arise after the commencement of the original English text but before the authentication of the Chinese text. Also see *HKSAR v Tam Yuk Ha* [1997] 2 HKC 531 (Court of Appeal).

⁷¹ It is only when there is clearly a difference of meaning that the court has to reconcile the two texts: *HKSAR v Tam Yuk Ha* [1997] 2 HKC 531 (Court of Appeal), per Chan CJHC at p. 539D–E.

~ Section 10B(3) of Cap. 1

Section 10B(3) of Cap. 1 deals with the case where a comparison of the two texts discloses a difference of meaning. Only a parallel reading of the two versions can reveal whether they are susceptible to different interpretations, and neither one of the versions should be preferred without considering the other. Although section 10B does not impose an express obligation on the courts to consult and compare both texts, if a parallel reading reveals a possible ambiguity, then the court should be approached to compare both texts⁷².

Discrepancies are to be tackled in two steps according to section 10B(3) of Cap. 1. The rules of statutory interpretation which are ordinarily applicable should be invoked first to resolve the difference, failing which, the meaning that best reconciles the two texts, having regard to the object and purposes of the statute, should be adopted⁷³. If a piece of legislation was originally enacted in one language only or its wording derives from a text which was written only in one language, that language version can be taken as more accurately reflecting the legislature's intent at the time the legislation was enacted⁷⁴.

Step One: Recourse to the Rules of Statutory Interpretation Ordinarily Applicable

Section 10B(3) of Cap. 1 requires first that an attempt be made to resolve the difference by using the rules of statutory interpretation that ordinarily apply. Although these rules are voluminous, the general guidelines provided by Cap. 1 remain useful for this purpose. These guidelines are summarized below.

Section 9 of Cap. 1 provides that Chinese words and expressions in the English text should be read according to the Chinese language and custom.

⁷² See Tabory (above), pp. 199–200.

⁷³ *HKSAR v Lau San Ching and Others* [2003] 2 HKC 378 (Court of First Instance) at p. 393, paragraph 55. However, a technical drafting error should be distinguished from a bilingual linguistic discrepancy. See *Chan Fung Lan v Lai Wai Chuen* [1997] 1 HKC 1 (High Court); *Lam Chit Man v Cheung Shun Lin* (林哲民對張順達), CACV1046/2001, 12 July 2002 (Court of Appeal); *Shenzhen Kai Long Investment and Development Co. Ltd. v CEC Electrical Manufacturing (International) Co. Ltd.* (深圳市開隆投資開發有限公司與長興電業製品廠(國際)有限公司), HCMP1885/2000, 30 October 2003 (Court of First Instance). Please also see paragraph 6 of *A paper Discussing Cases Where the Two Language Texts of an Enactment are Alleged to Be Different* (above).

⁷⁴ Cf. *HKSAR v Lau San Ching and Others* [2003] 2 HKC 378 (Court of First Instance) at p. 393, paragraph 55; *Shenzhen Kai Long Investment and Development Co. Ltd. v CEC Electrical Manufacturing (International) Co. Ltd.* (深圳市開隆投資開發有限公司與長興電業製品廠(國際)有限公司), HCMP1885/2000, 30 October 2003 (Court of First Instance). It should be noted that in the case of an original English enactment with its Chinese text subsequently declared authentic (see above), although the two versions came into being at different times, they both had gone through official scrutiny under their respective legislative procedures. Therefore, it is submitted that whether the Chinese text of an Ordinance was enacted simultaneously with the English text, or was later declared authentic, it should be construed in either case as equally valid and authoritative with the English text.

Reciprocally, English words and expressions in the Chinese text should be read according to the English language and custom. Section 10C of Cap. 1 provides that if an expression of the common law is used in the English text while an analogous expression is used in the corresponding Chinese text, the legislation should be construed in accordance with the common law meaning of that expression.

As mentioned earlier in this article, section 19 of Cap. 1 sets out the general principles of interpretation: legislation is deemed to be remedial and must receive such a fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the legislation according to its true intent, meaning and spirit. Section 19 reminds the courts to so construe legislation as to best give effect to the intention of the legislature. Depending on the circumstances, this might lead a court to give words a more restrictive, or more extensive, meaning than they may bear in their ordinary sense. It can be said that section 19 requires the court to avoid any interpretative approach that would lead to unreasonableness or injustice, especially where legislation has a clear purpose⁷⁵.

It is important to remember that section 2(1) of Cap. 1 provides that the provisions of the Ordinance apply to every other piece of legislation unless there is a contrary intention⁷⁶. The applicability of Cap. 1 should therefore be critically examined before the principles of interpretation contained in it are invoked. The process of common law judicial reasoning is very sophisticated and therefore there cannot be any cure-all formula for statutory interpretation. Different interpretative criteria and factors must be sifted and weighed against one another in each individual case⁷⁷.

Step Two: The Meaning that Best Reconciles the Texts

Section 10B(3) of Cap. 1 states that if the rules of statutory interpretation ordinarily applicable do not resolve a difference of meaning, then “the meaning which best reconciles the texts, having regard to the object and purposes of the Ordinance” must be adopted. This second limb of section 10B(3) is itself open to interpretation. Section 19 of Cap. 1 speaks of an interpretation that will best ensure the attainment of “the *object* of the Ordinance” according to its true intent, meaning and spirit, whereas section 10B(3) refers to the “*object and purposes* of the Ordinance”. While “intent”

⁷⁵ Wesley-Smith, *The Sources of Hong Kong Law* (Hong Kong University Press, 1994), pp. 240–1.

⁷⁶ Wesley-Smith (above), pp. 233–4: discussing *Sin Poh Amalgamated (Hong Kong) Ltd v Attorney General* [1963] HKLR 77, [1964] HKLR 879, [1965] WLR 64 (Privy Council). Three principles for establishing the contrary intention have been identified: that the person who alleges a contrary intention has the burden of proof, that the burden of proof needs only to be discharged on the balance of probabilities, and that a contrary intention should be discovered from the substance and tenor of the legislation as a whole. As such, it is submitted that the interpretative rules contained in sections 10B and 19 of Cap. 1, insofar as they ultimately fall back on the purpose and intent of the entire statute, should not be circularly displaced by virtue of section 2(1) of Cap. 1.

⁷⁷ Please see Bennion (above).

and “meaning” relate more specifically to the imputed meaning and effect of the enactment in its application to particular factual situations (i.e., its legal meaning), “purpose” and “object” are equivalent concepts which have an overall reference to the mischief that the relevant statute is designed to remedy.

Sections 10B(3) and 19 of Cap. 1 cannot be taken to be in conflict because section 19 is of general application and looks to an interpretation that best ensures the attainment of the “object” of the enactment according to its “true intent, meaning and spirit”. The second limb of section 10B(3) just reiterates the relevance of the “object” of an enactment when resolving a discrepancy⁷⁸. It is still subject to the approach of a “fair, large and liberal construction” in the light of the legislative intention under section 19.

What “best reconciles” the texts is a question of degree. A word might be given a strained construction, or less natural or obvious interpretation, so as to achieve the meaning that best reconciles the two texts, even though its grammatical meaning in one language may be stretched or twisted in the process⁷⁹. Also, the process of reconciliation is different depending on the nature of the alleged divergence and the context of the statute. A direct solution is to adopt a meaning that is shared by both versions if one text is ambiguous and the other is plain and unequivocal, or if one text has a broader meaning than the other. However, the common meaning obtained by applying a purely semantic approach may not be decisive. It must correspond to the legal meaning intended by the legislature⁸⁰.

Hence the relevant expression has to be construed in its context in order to deduce an objective solution that best gives effect to the legislative intent. In other words, the process of reconciliation does not stop at extracting the highest common meaning in both texts, which may possibly be repugnant to the spirit of the legislation as a whole⁸¹. It must still be related back to and tested against the backdrop of the overall objective of the legislation in question.

⁷⁸ Tabory (above), p. 174: there were objections during the drafting of Article 33(4) of the 1969 *Vienna Convention on the Law of Treaties* to a double reference to “object and purpose” as it had already appeared in the general rule of interpretation. The repetition of the element of object and purpose can be seen as a warning against abandoning the consistent regard for it even in step two of reconciliation, when the other elements of the general rules of interpretation have been exhausted under step one.

⁷⁹ Cf. *Re Madam L* [2004] 4 HKC 115 (Court of First Instance); *Chan Sau Mui and Another v To Cheong Lam* HCA7415/1995, 4 July 2006 (Court of First Instance).

⁸⁰ Tabory (above), p. 200: The International Law Commission in its Commentary on the 1966 draft articles on the law of treaties, discourages any possible departure from the principle of the unity of the treaty and equality of the texts, rejecting even the principle of restrictive interpretation which incorporates the element common to all texts.

⁸¹ See, for example, *Leung Kwok Hung and Others v HKSAR* [2004] 3 HKLRD 729 (Court of Appeal), affirmed [2005] 3 HKLRD 164 (Court of Final Appeal), where the Court refused to “read down” the term “public order (*ordre public*)” by ignoring the reference to “*ordre public*”, which was not precisely reflected in the Chinese text, as that would be inconsistent with the object and purposes of the ordinance.

In some cases, the two texts may be found to be manifestly inconsistent and therefore incapable of supporting a common meaning. In such a case, the court must apply the general purposive approach to arrive at the meaning. The construction approved by the court must of course accommodate the legislative intent but it can be a construction that may have no grammatical analogue in one or both of the language versions⁸².

It must be acknowledged that section 10B of Cap. 1 provides only broad guidelines for bilingual interpretation and is not a foolproof formula for the resolution of linguistic discrepancies. Statutory interpretation is after all the province of the judiciary under the common law. Statutory guidelines can only offer a general framework, which is to be filled by judicial rulings according to the particular context of each individual case.

⁸² Michael Beaupré, *Interpreting Bilingual Legislation* (Carswell, 2nd ed., 1986), pp. 21–28: citing the cases *Food Machinery Corp. v Registrar of Trade Marks* [1946] 2 D.L.R. 258 (Ex. Ct.) and *Jones and Maheux v Gamache* (1968), 7 D.L.R. (3d) 316 (S.C.C.). At p. 25, the former case was summarized to the effect that it is not enough to say, if one version is clear while the other is unclear, that the clear version shall be preferred and applied. The clear version must be in harmony with a reasonable construction of the unclear one. But what is reasonable can only be determined by reference to the whole Act. Both versions, in such a case, must be compared and, where possible, justified; ... If that is impossible, the context naturally rules the inevitable choice of the version to be preferred. At p. 28, it was concluded from the latter case that the search for “context” is still at the root of even a bilingual approach to the interpretation of legislation.

Example 1

The English text of a statutory provision regulates the vehicles “entering or leaving” a delineated area. In the Chinese text, “進出” (jin chu) is adopted as the Chinese equivalent of “entering or leaving”. Exactly which vehicles are regulated under the enactment may be subject to different interpretations in the Chinese text. For example, it may be a vehicle that –

- (A) is either entering or leaving the area; or
- (B) having entered the area earlier, is now leaving the area.

Construction (A) is consistent with the meaning of the English text while construction (B) has a more restrictive meaning than the English text. This is a case where the English text is specific and the Chinese text ambiguous. The easiest route is to take construction (A), which is the meaning shared by both versions. However, the context as well as the purpose and object of the enactment in question should also be examined to ensure that construction (A) is indeed consistent with the meaning intended by the legislature.

Example 2

The English text of an enactment forbids the manoeuvring of “sharp” objects in certain circumstances. The word “sharp” is polysemous and can refer to objects that are either thin-edged or fine-pointed. The Chinese text adopts “尖” (jian) as the corresponding expression of “sharp”. The character “尖” refers only to objects with fine points. This is a case where the English term bears a broader grammatical meaning than the Chinese. If the narrower meaning of the Chinese text is opted for, an object with thin edges will fall flatly outside the ambit of this prohibitory enactment.

Again, the approach should be to construe the two versions in the light of the context and object of the statute. Even though the more restrictive construction is compatible with the two texts, it is still unacceptable if the outcome will defeat the legislative intent. Therefore a straightforward linguistic resolution is not applicable in all cases. In this example, if the clear legislative intent is to catch both thin-edged and fine-pointed objects in the circumstance, a strained construction may have to be given to the Chinese word “尖” in order to reconcile with the English term “sharp”.

6. Conclusion

The value of an interpretation statute is clear. It enables written laws to be shortened and simplified. It is also a convenient repository for various provisions regulating how written laws operate and how they are to be interpreted. Cap. 1 ticks all those boxes. Without it the Hong Kong statute book would undoubtedly be considerably lengthened and would be much less homogeneous in appearance. And, importantly in the Hong Kong context, Cap.

1 offers guidance on how bilingual texts are to be treated and how any divergence in meaning between them is to be resolved.

Because of their value in shortening and simplifying written laws, jurisdictions are frequently tempted to include more and more material in interpretation statutes. However, the more comprehensive an interpretation statute is made, the greater the risk of lessening the overall accessibility of written laws. If the reader of any particular enactment can only arrive at a complete understanding of it by being familiar with what is in the relevant interpretation statute, the result is that the meaning of the enactment may really only be clear to readers with specialized knowledge. A balance must be struck between the competing considerations of shortening and simplifying individual written laws and producing accessible legislation. Cap. 1, it is submitted, strikes an appropriate balance.

Cap. 1, as a piece of legislation about legislation, plays an important role in the efficient regulation of Hong Kong society and is a significant fixture on its legal landscape.

Appendix⁸³

- (a) Definitions in section 3 of Cap. 1 that extend or restrict the meanings of words and expressions
- the meaning of “act” (作為), when used with reference to an offence or civil wrong, has been extended to include a series of acts, an illegal omission and a series of illegal omissions;
 - the meaning of “amend” (修訂) has been extended to include repeal, add to, vary, and to do all or any of these things simultaneously or by the same ordinance or instrument;
 - the meaning of “document” (文件) has been extended to mean any publication and any matter written, expressed or described on any substance by means of letters, characters, figures or marks, or by more than one of these means;
 - the meaning of “immovable property” (不動產) has been extended to mean any land covered by water, any estate, right, interest or easement in or over any land, and anything attached to land or permanently fastened to anything attached to land;
 - the meaning of “master” (船長), when used with reference to a vessel, has been extended to mean the person (except a pilot) having for the time being command or charge of the vessel;
 - the meaning of “person” (人、人士、個人、人物、人選) has been extended to include any public body and any body of persons, corporate or unincorporate, and this definition also applies despite the fact that the word “person” occurs in a provision creating or relating to an offence or for the recovery of any fine or compensation;
 - the meaning of “public place” (公眾地方、公眾場所) has been extended to include any place the admission to which is obtained by payment;
 - the meanings of “street” (街、街道) and “road” (路、道路) have been extended to include any open place used or frequented by the public or to which the public have or are permitted to have access;
 - the meaning of “words” (字、文字、語言文字) has been extended to include figures and symbols;
 - the meanings of “writing” (書寫) and “printing” (印刷) have been extended to include lithography, photography, typewriting and any other mode of representing words in a visible form;
 - the meaning of “year” (年) has been restricted to mean a year according to the Gregorian calendar.

⁸³ Please note that this Appendix does not list all the definitions contained in section 3 of Cap. 1. It only lists some commonly used definitions by way of illustration.

- (b) Definitions in section 3 of Cap. 1 that provide abbreviated forms for words and expressions
- “Administrative Appeals Board” (行政上訴委員會) means the Administrative Appeals Board established under the Administrative Appeals Board Ordinance (Cap. 442);
 - “Chief Executive” (行政長官) means –
 - (a) the Chief Executive of the Hong Kong Special Administrative Region;
 - (b) a person for the time being assuming the duties of the Chief Executive according to the provisions of Article 53 of the Basic Law;
 - “Chief Executive in Council” (行政長官會同行政會議) means the Chief Executive acting after consultation with the Executive Council of the Hong Kong Special Administrative Region;
 - “Chief Judge” (高等法院首席法官) means the Chief Judge of the High Court;
 - “Chief Justice” (終審法院首席法官) means the Chief Justice of the Court of Final Appeal;
 - “counsel” (大律師) means a person admitted before the Court of First Instance to practise as counsel;
 - “court” (法院、法庭) means any court of the Hong Kong Special Administrative Region of competent jurisdiction;
 - “Court of Appeal” (上訴法庭) means the Court of Appeal of the High Court;
 - “Court of Final Appeal” (終審法院) means the Hong Kong Court of Final Appeal established by section 3 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484);
 - “Court of First Instance” (原訟法庭) means the Court of First Instance of the High Court;
 - “Government” (特區政府) means the Government of the Hong Kong Special Administrative Region;
 - “High Court” (高等法院) means the High Court of the Hong Kong Special Administrative Region established by section 3 of the High Court Ordinance (Cap. 4);
 - “HKSAR” (特區) means the Hong Kong Special Administrative Region of the People’s Republic of China;
 - “judge” (法官) means the Chief Justice, a judge of the Court of Final Appeal, the Chief Judge, a Justice of Appeal of the Court of Appeal, a judge of the Court of First Instance, a recorder of the Court of First Instance or a deputy judge of the Court of First Instance;

- “judge of the Court of Final Appeal” (終審法院法官) means the Chief Justice, a permanent judge and a non-permanent judge of the Court of Final Appeal;
- “justice” and “justice of the peace” (太平紳士) mean a person appointed to be a justice of the peace under the Justices of the Peace Ordinance (Cap. 510);
- “solicitor” (律師) means a person admitted before the Court of First Instance to practise as a solicitor.